



APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-1501

JAMES JEFFERSON McLAIN, ET AL.,
Petitioners,

versus

REAL ESTATE BOARD OF NEW ORLEANS, INC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 31, 1979
CERTIORARI GRANTED MAY 14, 1979

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

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JAMES JEFFERSON McLAIN, ET AL.,
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REAL ESTATE BOARD OF
NEW ORLEANS, INC., ET AL.,
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ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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In the United States District Court for the
Eastern District of Louisiana

JAMES JEFFERSON McLAIN, ET AL.

versus CA NO. 75-3402(D)

REAL ESTATE BOARD OF
NEW ORLEANS, ET AL

Chronological List of Relevant Docket Entries:

DATE	NO.	PROCEEDINGS
10-31-75	1	Plaintiffs' Complaint
12-12-75	11	Answer, Defendant Isabelle McLeod
12-17-75	12	Answer, Defendant Stan Weber
1- 5-76	13	Pre-trial order — Defendants relieved from filing answers until date to be fixed (E.J.B.)
3- 5-76	14	Defendants' Motion to Dismiss, Notice of Hearing on 3-31-76, with memo
3-25-76	15	On Plaintiffs' Motion, ORDERED: That Defendants' Motion to Dismiss be reset for 4-28-76 and that Plaintiffs reply to Defendants' Motion to Dis- miss by 4-7-76 (E.J.B.)
4- 8-76	16	Plaintiffs' Memorandum in Opposition to Motion to Dismiss
4-28-76	17	Minute entry: That Motion to Dismiss set for hearing 4-28-76 to be continued upon written motion of Defendants

- 4-27-76 18 Defendants' Motion for Continuance of Hearing on Motion to Dismiss, ORDERED: That Defendants' Motion to Dismiss is continued until 5-26-76
- 5-12-76 19 Minute entry: Hearing set for 5-26-76 is continued to 6-2-76 at 10:00 a.m.
- 5-14-76 20 Defendants' first supplemental memorandum in support of Motion to Dismiss
- 6- 2-76 21 Motion to Dismiss: Submitted
- 6-10-76 22 ORDER: That Plaintiffs have until 6-18-76 to file further memoranda
- 6-21-76 23 Plaintiffs' first supplemental memorandum in opposition to Motion to Dismiss
- 7- 2-76 24 Defendants' second Supplemental Memorandum in support of Motion to Dismiss
- 8-26-76 25 Minute Entry: Conference is set for 9-3-76 at 3 P.M. (E.I.B.)
- 9- 8-76 26 Minute Entry: Conference held 9-3-76; further conference to be held 10-13-76
- 9-14-76 27 Third Supplemental Memorandum in support of Defendants' Motion to Dismiss
- 10-15-76 28 Minute Entry: Conference held 10-13-76 adjourned to 1-14-77 at 4:00 P.M.
- 12-17-76 29 Plaintiffs' notice to take the deposition of Mr. M. P. Turner on 12-28-76 at 9:00 A.M.

- 12-17-76 30 Plaintiffs' notice of deposition of Gertrude Gardner Inc. on 12-27-76 at 2 P.M.
- 12-17-76 31 Plaintiffs' notice of deposition of Mr. J. Mills on 12-28-76 at 2:00 P.M.
- 12-17-76 32 Plaintiffs' notice of deposition of P. Griener on 12-28-76 at 3:00 P.M.
- 12-17-76 33 Plaintiffs' notice of deposition of A. V. Miranda on 12-28-76 at 11:00 A.M.
- 12-21-76 34 Plaintiffs' notice of deposition of Mr. J. Hecker on 12-30-76 at 11:00 A.M.
- 12-21-76 35 Plaintiffs' notice of deposition of Mr. E. G. Miranne on 1-6-77 at 9:30 A.M.
- 12-21-76 36 Plaintiffs' notice of deposition of Mr. Stan Weber on 12-29-76 at 3:30 P.M.
- 12-21-76 38 On Plaintiffs' Motion, ORDERED: That cutoff date for discovery is extended from 12-31-76 to 1-14-77.
- 12-22-76 39 Plaintiffs' first set of interrogatories.
- 12-23-76 41 Plaintiffs' notice of deposition of Mr. Max Derbes Jr. on 1-6-77 at 2:00 P.M.
- 12-28-76 43 Plaintiffs' amended notice of deposition of:
1. P. Turner, 1-3-77 at 9:00 A.M.
 2. A. Miranda, 1-3-77 at 11:00 A.M.
 3. J. Mills, 1-6-77 at 2:00 P.M.
 4. P. Griener, 1-4-77 at 10:00 A.M.
 5. A. T. Post, 1-10-77 at 2:00 P.M.
 6. S. Weber, 1-10-77 at 10:30 A.M.
 7. J. Hecker, 1-7-77 at 10:00 A.M.
 8. M. Derbes, 1-13-77 at 2:00 P.M.

- 1-18-77 50 Minute entry: Further conference held 1-14-77. Defendants are granted until 3-14-77 to reply to Plaintiffs' Memorandum.
- 1-20-77 52 Deposition of A. Miranda, taken 1-3-77
- 1-20-77 53 Deposition of E. G. Miranne, taken 1-6-77
- 2- 2-77 54 Letter: Moise Steeg to Jerry Meunier, Courtroom Deputy, Section D, re: Return on subpoena duces tecum to Carruth Mortgage Corporation
- 2-14-77 55 Deposition of J. O. Hecker taken 1-17-77
- 2-18-77 56 Plaintiffs' second Supplemental Memo in opposition to Defendants' Motion to Dismiss
- 3-11-77 57 Defendants' third Supplemental Memorandum in support of Motion to Dismiss
- 3-29-77 58 Deposition of J. W. Mills, Jr., taken 1-6-77
- 3-29-77 59 Deposition of M. P. Turner, taken 1-13-77
- 3-29-77 60 Deposition of M. Derbes, taken 1-12-77
- 3-29-77 61 Deposition of Stan Weber, taken 1-11-77
- 5-31-77 62 Memorandum Opinion and Order: Defendants' Motion to Dismiss is granted, Plaintiffs' action is dismissed
- 6-24-77 64 Plaintiffs' Notice of Appeal
- 8- 3-77 X Case forwarded to Court of Appeals

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES JEFFERSON McLAIN, et al.,
Plaintiffs-Appellants,

versus No. 78-2324

REAL ESTATE BOARD OF
NEW ORLEANS, INC., et al.,
Defendants-Appellants.

Chronological List of Relevant Docket Entries:

DATE	PROCEEDINGS
11-15-78	Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit affirming dismissal of Plaintiffs' Action
12-15-78	Denial of panel re-hearing by United States Court of Appeals for the Fifth Circuit

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES JEFFERSON McLAIN, et al.,
Plaintiffs-Petitioners,

versus No. 78-1501

REAL ESTATE BOARD OF
NEW ORLEANS, INC., et al.,
Defendants-Respondents.

Chronological List of Relevant Docket Entries:

DATE	PROCEEDINGS
3-14-79	Plaintiffs' application for extension of time to file Petition for Writ of Certiorari
3-15-79	ORDER: That Petitioner is granted until April 2, 1979 in which to file Petition for Writ of Certiorari
3-31-79	Plaintiffs' Petition for Writ of Certiorari
5-14-79	ORDER: "The Petition for a Writ of Certiorari is Granted."

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

JAMES JEFFERSON McLAIN, DOUGLAS ARTHUR
NETTLETON, JR., RAYMOND JOSEPH MUNNA,
IRVING HIRSCH KOCH, and all other parties
similarly situated

Plaintiffs,

versus CA No. 75-3402(D)

REAL ESTATE BOARD OF NEW ORLEANS, INC.,
JEFFERSON BOARD OF REALTORS, INC., GER-
TRUDE GARDNER, INC., LATTER AND BLUM,
INC., WAGUESPACK AND PRATT, INC., STAN
WEBER AND ASSOCIATES, INC., SANDRA, INC.,
ISABELLE C. McLEOD dba ISABELLE C. McLEOD,
REALTORS, and all other parties similarly situated,
Defendants.

Filed: Dec. 12, 1975

ANSWER

For the answer to the Complaint of the petitioner in the above entitled cause, Isabelle McLeod d/b/a Isabelle C. McLeod, Realtors, defendant above named, says:

I.

Defendant denies the allegations contained in Paragraph I for lack of sufficient information and belief.

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II.

Defendant denies the allegations of Paragraph II for lack of sufficient information and belief.

III.

Defendant admits the allegations of Paragraph III insofar as Isabelle McLeod d/b/a Isabelle C. McLeod, Realtors, transacts business and has an office in the Eastern District of Louisiana.

IV.

Defendant denies the allegations of Paragraph IV for lack of sufficient information and belief except that defendant, Isabelle McLeod d/b/a Isabelle C. McLeod, did provide real estate brokerage service in connection with a sole transaction for Douglas Arthur Nettleton, Jr.

V.

Defendant denies the allegations of Paragraph V.

VI.

Defendant denies the allegations of Paragraph VI except that the Real Estate Board of New Orleans, Inc. is a Louisiana corporation and provides certain services to its members.

VII.

Defendant denies the allegations of Paragraph VII for lack of sufficient information and belief.

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VIII.

Defendant denies the allegations of Paragraph VIII for lack of sufficient information and belief.

IX.

Defendant denies the allegations of Paragraph IX.

X.

Defendant denies the allegations of Paragraph X.

XI.

Defendant denies the allegations of Paragraph XI.

XII.

Defendant denies the allegations of Paragraph XII.

XIII.

Defendant denies the allegations of Paragraph XIII.

XIV.

Defendant denies the allegations of Paragraph XIV for lack of sufficient information and belief.

XV.

Defendant denies the allegations of Paragraph XV.

XVI.

Defendant denies the allegations of Paragraph XVI.

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XVII.

Defendant denies the allegations of Paragraph XVII.

XVIII.

Defendant denies the allegations of Paragraph XVIII.

XIX.

Defendant denies the allegations of Paragraph XIX.

XX.

Defendant denies the allegations of Paragraph XX.

WHEREFORE, defendant prays for:

I.

Judgment that the Complaint of the Petitioner be dismissed with prejudice and at plaintiffs' costs.

CHAFFE, McCALL,
PHILLIPS, TOLER & SARPY

/s/ GERALD WASSERMAN
Leon Sarpy
Gerald Wasserman

(Certificate of Service Omitted)

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Number and Title Omitted)

Filed: Dec. 17, 1975

ANSWER

For answer to the complaint of the petitioners in the above cause, Stan Weber & Associates, Inc., a defendant above named, says that:

I.

Defendant denies the allegations contained in paragraph I for lack of sufficient information and knowledge to justify a belief.

II.

Defendant denies the allegations contained in paragraph II for lack of sufficient information and knowledge to justify a belief.

III.

Defendant denies the allegations contained in paragraph III except to admit that defendant does do business and has an office in the Eastern District of Louisiana.

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IV.

Defendant denies the allegations contained in paragraph IV for lack of sufficient information and knowledge to justify a belief.

V.

Defendant denies the allegations contained in paragraph V.

VI.

Defendant denies the allegations contained in paragraph VI except that it does admit that the Real Estate Board of New Orleans, Inc. is a Louisiana corporation and provides certain services to its members.

VII.

Defendant denies the allegations contained in paragraph VII except to admit that the Jefferson Board of Realtors is a Louisiana corporation maintaining an office and transacting business in the Eastern District of Louisiana.

VIII.

Defendant denies the allegations contained in paragraph VIII for lack of sufficient information and knowledge to justify a belief except to admit its name and that it is a Louisiana corporation domiciled in the Eastern District of Louisiana where it does business.

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IX.

Defendant denies the allegations contained in paragraph IX.

X.

Defendant denies the allegations contained in paragraph X.

XI.

Defendant denies the allegations contained in paragraph XI.

XII.

Defendant denies the allegations contained in paragraph XII for lack of sufficient information and knowledge to justify a belief.

XIII.

Defendant denies the allegations contained in paragraph XIII for lack of sufficient information and knowledge to justify a belief.

XIV.

Defendant denies the allegations contained in paragraph XIV for lack of sufficient information and knowledge to justify a belief.

XV.

Defendant denies the allegations contained in paragraph XV.

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XVI.

Defendant denies the allegations contained in paragraph XVI.

XVII.

Defendant denies the allegations contained in paragraph XVII.

XVIII.

Defendant denies the allegations contained in paragraph XVIII.

XIX.

Defendant denies the allegations contained in paragraph XIX.

XX.

Defendant denies the allegations contained in paragraph XX.

WHEREFORE, defendant prays for judgment that the complaint of the petitioners be dismissed with prejudice and at their cost.

/s/ CHARLES F. BARBERA
CHARLES F. BARBERA

(Certificate of Service Omitted)

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Number and Title Omitted)

Filed: Jan. 5, 1976

PRE-TRIAL ORDER

Counsel for plaintiffs and counsel for defendants have presented to the Court the following agreed schedules and dates to orderly progress this cause; and, the Court finding same to be appropriate and reasonable;

IT IS HEREBY ORDERED that:

1. Any motion by a defendant to quash service or to object to the jurisdiction or venue of this Court shall be filed on or before sixty (60) days from the date hereof. Plaintiffs' reply, if any, to such motions, shall be filed within thirty (30) days of the service of said motions; and defendants shall file their response to plaintiffs' reply, if any, within twenty (20) days. Any such motions shall be noticed for hearing by the plaintiffs on a date convenient to the Court.

2. Any motion to be filed by a defendant under Rule 12(b) (other than those referred to in paragraph 1 above) or 12(e) shall be filed on or before thirty (30)

days following the date on which the Court shall have rendered its decision on all of the motions filed under paragraph 1 above. Any such motions shall be noticed for hearing by the plaintiffs on a date convenient to the Court.

3. On or before the date fixed for filing motions under paragraph 2 hereof, defendants will file and serve, if same are to be filed, interrogatories directed to plaintiffs as to the grounds for their pleadings under the provisions of Rule 11 of the Federal Rules of Civil Procedure; within sixty (60) days thereafter, plaintiffs will serve answers or objections to any such interrogatories; within thirty (30) days following receipt of answers to all interrogatories which plaintiffs must answer, defendants shall file all motions, if any are to be filed, contemplated by Rule 11 of the Federal Rules of Civil Procedure. Plaintiffs shall serve any reply to any such motions within twenty (20) days of the service of such motions and within ten (10) days thereafter defendants shall file any response to plaintiffs' reply.

4. On or before thirty (30) days following the last date on which this Court disposes of all motions filed pursuant to paragraphs 2 and 3 above, the parties to this action shall initiate discovery proceedings for the limited purpose of determining whether this action is to be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, including depositions of plaintiffs and others, interrogatories and requests

for the production of documents. Such discovery may be conducted by the parties in one or more stages and shall be completed within one hundred eighty (180) days or such greater period as may be fixed by the Court.

5. On or before thirty (30) days following the date established in paragraph 4 above for the conclusion of discovery limited to questions involving whether this action may be maintained as a class action, all motions involving the class action question will be filed and served; within forty-five (45) days after service of any such motion the opposing parties will file their response thereto and movers shall have ten (10) days thereafter to reply.

6. All discovery, other than discovery permitted by paragraphs 3 and 4 above, shall be held in abeyance until further order of this Court following the determination of the class action questions as provided in paragraph 5 above; provided, however, the Court may authorize discovery upon a showing of good cause, such as the age or infirmity of a potential witness.

7. Designation of counsel to represent all counsel of the respective parties to receive and forward notices and notify the Court of responses and actions concerning pre-trial matters, etc., shall await the determination of the motions contemplated by paragraphs 1 and 5 above.

IT IS FURTHER ORDERED that all defendants are hereby relieved from filing answers until a date to be fixed by further order of this Court following its determination of all class action questions as provided in paragraph 5 above.

IT IS FURTHER ORDERED that deviations from or additions to this schedule will be permitted only by a further order of this Court.

New Orleans, Louisiana, this 5th day of January, 1976.

/s/ EDW. J. BOYLE, SR.
UNITED STATES DISTRICT
JUDGE

(Signature of Counsel Omitted)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Number and Title Omitted)

Filed: Mar. 5, 1976

MOTION TO DISMISS

Defendants move the court to dismiss this action because the complaint fails to state a claim against defendants upon which relief can be granted on the ground that the court lacks jurisdiction for the following reasons:

First, that the alleged claim does not arise under any act of Congress regulating Commerce or protecting trade and Commerce against restraints and monopolies as provided under Title 28, Section 1337 of the United States Code, all as appears more fully from the affidavits of Max Derbes, Jr. and Dalton L. Truax, Jr., annexed hereto as part hereof and marked "Exhibits A & B" respectively for identification; and

Second, that the requisite diversity jurisdiction is lacking because it appears on the face of the complaint that the controversy is not between citizens of different states, but that all plaintiffs and defendants are citizens and residents of or domiciled and have their principal offices in the State of Louisiana.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Number and Title Omitted)

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

MAY IT PLEASE THE COURT:

This Memorandum is filed in support of defendants' Motion to Dismiss for want of subject matter jurisdiction. The complaint purports to state a claim "for injunctive relief and treble damages under the anti-trust

laws" against defendants who are realtors doing business within the jurisdiction of this Honorable Court. The jurisdictional allegations, set forth under the heading "The Nature of Trade and Commerce," are contained in paragraphs XI, XIII and XIV.

Paragraph XI alleges no facts, but merely asserts the conclusion that defendants' activities "are within the flow of interstate commerce and have an effect upon that commerce." Paragraph XIII alleges that many persons using defendants' services in connection with the purchase and sale of real estate "are persons moving into and out of the Greater New Orleans Area." Paragraph XIV alleges that defendants assist their clients in securing, financing and insurance involved with the purchase of real estate and that

"... such financing and insurance are obtained from sources outside the State of Louisiana and move in interstate commerce into the State of Louisiana through the activities of the defendants."

In fact, defendants do not engage in any interstate activities and the allegation as to financing and insurance is directly contradicted by the averments of the affidavits of Max J. Derbes, Jr. and Dalton L. Truax, Jr. annexed to defendants' Motion to Dismiss.

These affidavits recite that real estate brokers in the State of Louisiana are licensed by the State to perform

the function of real estate brokers in that State and no other. They further aver that there is no legal or other requirement that the sale or purchase of real estate in the State of Louisiana be made through a real estate broker and that the affiants has personal knowledge of sales made other than through such brokers. These affidavits further aver that the function of real estate brokers is to bring buyers and sellers together, that their commissions are earned when this has been done and that they have essentially completed their function when they have done so. It is finally averred that real estate brokers do not obtain and are not instrumental in obtaining financing of credit sales, save in a few special cases, nor are they connected with examination of titles in connection with the sale of real estate or financing of such sales.

It is submitted that defendants' activities as real estate brokers are clearly intrastate in nature and have no effect on interstate commerce. As such, they do not meet the criteria for application of federal anti-trust laws:

"... The test of jurisdiction is not that the acts complained of affect a business engaged in interstate commerce, but that the conduct complained of affects the interstate commerce of such business.

"... despite the increased thrust of federal commerce power as business operations become more interrelated and complex, the

courts have consistently required that in order for federal anti-trust jurisdiction to be sustained the effect on interstate commerce of an alleged antitrust violation in a local area must be direct and substantial, and not merely inconsequential, remote or fortuitous." (citing authorities) *Page v. Work*, 290 F.2d 323, 330, 332 (9th Cir. 1961).

Page v. Work, *supra*, was an action in behalf of a newspaper primarily engaged in publication of legal advertising for treble damages for violation of the anti-trust laws against a bureau representing newspaper owners in solicitation of legal advertising upon the ground that acts of the bureau caused alleged loss of publication of delinquent tax lists. Affirming a district court judgment of dismissal, the Court of Appeal concluded in its opinion as follows:

"[11] In our view, the language of Section 18 in no way indicates that Congress intended to apply the provisions of that Act to purely local activities wholly directed to a local intrastate market and relating to a product not in the flow of interstate commerce and where the effects on interstate activities in which the parties engage are insubstantial, inconsequential and fortuitous, if not nonexistent." at 333-4.

This requirement that the effect of the activity in question on interstate commerce be substantial and

direct, and not merely remote and incidental, lead to dismissal of anti-trust actions against realtors in *Marston v. Ann Arbor Property Managers Assn.*, 302 F. Supp. 1276 (D. C. Mich. 1969), *aff'd* 422 F.2d 836 (6th Cir. 1970), and *Cotillion Club, Inc. v. Detroit Real Estate Board*, 303 F. Supp. 850 (D. C. Mich. 1964). It is submitted that these decisions are precisely in point, are controlling and are dispositive of the plaintiffs' claims herein.

In *Marston*, *supra*, the alleged conspiracy was to fix the price level of rental apartments in Ann Arbor, Michigan and to control the supply of new apartments; jurisdiction was sought to be invoked under the provisions of Section 4 of the Clayton Act, as is sought herein. The district court dismissed the complaint for lack of jurisdiction, holding:

"[1,2] This court concludes that the provisions found within Section 1 of the Sherman Act have not been met and is fatal to plaintiffs' case. Section 1 of the Sherman Act provides that 'every contract, combination in the form of trust or other wise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *'. Unless interstate or foreign commerce has been directly and unreasonable restrained, there can be no violation of the Sherman Act and no private cause of action under the Clayton Act. The court is aware that a business of which the ultimate

object is the operation of intrastate activities, such as local apartment construction and rental, may make such a utilization of the channels of interstate trade and commerce that the business itself assumes some minor interstate character. However, the court does not find defendants conducting such a business. Defendants' business is not of such an interstate character as intended by the Act.

"It is clear from the complaint that the restraints alleged relate only to the rental of real estate in the Ann Arbor area. *This is local commerce and the competition allegedly restrained and interfered with is local in nature. There is no evidence that defendants' business has, or will have, a substantial adverse effect on interstate commerce.* (citing authorities) (Emphasis added.)

"[5] The actions of defendants are purely local in nature, restricted to the Ann Arbor area. Any effect their actions would have on interstate commerce is remote and inconsequential. There is no evidence of an intent to restrain interstate commerce, or a substantial and actual restraint of interstate commerce. Any conspiracy which only indirectly or incidentally affects and restrains interstate commerce is not within the purview of Section 1 of the Sherman Act. (cite omitted)

* * *

"The 'Restraint of Trade', if any, is strictly a local problem. Plaintiffs should seek their remedy under state law. The court would not hesitate to entertain plaintiffs' action if Section 1 of the Sherman Act had been violated, but it has not. Plaintiffs have failed to satisfy the interstate commerce requirement. They have been unable to satisfactorily demonstrate that defendants' activities have occurred within the 'flow' of interstate commerce, or that such activities have had a direct and adverse effect on interstate commerce." at 1279-80.

The district court dismissal of the plaintiffs' action was appealed to the Court of Appeals for the Sixth Circuit, which affirmed in a *per curiam* opinion quoting from the district court opinion that the defendants' activities were local commerce and that the competition allegedly restrained and interfered with was local in nature, saying:

"We agree with the district judge that plaintiffs have not pleaded a Sherman Act case." at 837.

In *Cotillion Club, supra*, the alleged conspiracy was

" . . . to create and carry out restrictions and restraints of interstate trade and commerce in the purchase, sale, transfer, financing, and occupancy of real estate, *including federally financed*

and insured real estate and house accommodations in the Detroit Metropolitan Area." (Emphasis added)

The allegations to support federal jurisdiction were that some members of the defendant organizations received and transmitted information and listings to and from other states, that some such members made and filed applications, reports and other documents for transmittal to Washington, D.C. or other out of state offices of their various federal housing agencies and that some members of such organizations made investigations, appraisals and surveys of federally financed or insured Michigan real estate to be transmitted to other states.

The court noted that nowhere in the complaint was there any allegation as to the extent or substantiality of these alleged interstate activities nor any allegation of interstate activities of the defendant association, as distinguished from their members. The court further noted that the allegations of the complaint failed to relate the alleged interstate activities of these members of the defendant associations to the alleged restraints complained of in the complaint. The court then said:

"[1] Such incidental activities across state lines, by members of the defendants, do not establish the jurisdiction of this Court. The critical question is whether the alleged restraints are operative in interstate commerce,

and not whether the defendants' members engage, in the overall conduct of their business, in incidental activities across state lines.

* * *

"[2] It is well settled that the Sherman Act was not designed to reach alleged restraints which are local in nature and do not substantially affect interstate commerce. . . .

* * *

"It is clear from the complaint in this case that the restraints alleged relate only to the purchase and sale of real estate in the Detroit Metropolitan Area. It is competition for the purchase and sale of this real estate which is assertedly injured by the alleged restraints. This is local commerce and the competition allegedly restrained and interfered with is local in nature. If one assumes the allegations to be true, they fail to allege facts showing that the restraints substantially burden interstate commerce." at 853-4.

The court observed that the relevant market involved was the sale of real estate in the Detroit Metropolitan Area and that the members of the defendants were licensed to sell real estate only in the State of Michigan (just as the defendants herein are licensed to sell real estate only in the State of Louisiana) and that the sales related to real property which was entirely local (just as the sales herein complained of are

alleged to be in the Greater New Orleans Area, Complaint Pars. XII, XIV). As to the alleged filing of applications, reports and other documents in connection with federally insured real estate within the State of Michigan, the court said:

"... The nature of these applications, reports, and other documents does not appear. The effect which the alleged restraints have upon these 'applications, reports, and other documents' does not appear, nor does the extent of any such effect appear. There is no relationship established between the alleged restraint and the incidental activities involving mailings across state lines.

"The complexity of modern business leaves little room for contracts, or business transactions, which cannot be said in some degree to affect interstate commerce.

"[3] The effect on interstate commerce must be direct and not remote and must be the result of intent to restrain interstate commerce, or there must be substantial and actual restraint of interstate commerce; and any conspiracy which only indirectly or incidentally affects and restrains interstate commerce is not within the purview of this section." at 854.

In *Manion v. Jefferson Board of Realtors*, Civil Action No. 73-2604 of this Honorable Court, speaking through

Judge Gordon, dismissed a complaint virtually identical with that herein and this dismissal was affirmed by the Court of Appeal for the Fifth Circuit in a memorandum opinion in its docket, No. 74-1901. No holding to the contrary has been cited and it is accordingly quite clear that plaintiffs' complaint must be dismissed for lack of jurisdiction. A copy of the transcript of the hearing on the Motion to Dismiss in *Manion, supra*, is attached as Exhibit "C." Judge Gordon's reasons for granting the motion are stated on pages 23-6.

Goldfarb v. Virginia State Bar, ____ U.S. ____, 44 L.Ed.2d 572, 95 S.Ct. 2004 (1975), does not derogate from the holding in *Marston*, *Cotillion Club* or *Manion, supra*, being entirely distinguishable on its facts and issues. The charge in *Goldfarb, supra*, was that operation of the Virginia State Bar minimum fee schedule, as applied to fees for legal services relating to residential real estate transactions, constituted price-fixing in violation of Section 1 of the Sherman Act. The Supreme Court's determination that the schedule and its enforcement violated the Sherman Act rested upon a careful consideration and analysis of "the nature of the transactions at issue and the place legal services play in those transactions. . . ." at 582-3. The "transactions at issue" were various aspects of financing the purchase of real estate:

" petitioners contracted to buy a home in Fairfax County, Virginia. The financing agency required them to secure title

insurance; this required a title examination, . . . " at 578.

No question was raised as to the sale or purchase by the petitioners of the home in question; the opinions of the district court, the Court of Appeal and the Supreme Court are all silent on the question whether the plaintiffs' purchase was made through a real estate broker but, if so, this phase of the transaction was complete and had passed out of the picture.

In its careful definition of the "nature of the transactions at issue and the place legal services play in those transactions," the Supreme Court adverted to the district court finding that a significant portion of funds furnished for the purchase of homes in Fairfax County came from without the State of Virginia and that significant amounts of loans on Fairfax County real estate were guaranteed by the VA and HUD, both of which were headquartered in the District of Columbia, in consequence of which:

" . . . Thus in this class action the transactions which create the need for the particular legal services in question frequently are interstate transactions. The necessary connection between the interstate transactions and the restraint of trade provided by the minimum fee schedule is present because, in a practical sense, title examinations are necessary in real estate transactions to assure a lien on a valid

title of the borrower. In financing realty purchases lenders require, 'as a condition of making the loan, that the title to the property involved be examined . . . ' Thus a title examination is an integral part of an interstate transaction . . . " at 583.

By contrast, in the instant case

"The essential function of a Louisiana real estate broker consists of counselling purchasers or sellers of real estate situated in the State of Louisiana. Assisting them in establishing the price of properties and bringing about agreements to purchase and sell. Brokers earn their commissions upon procuring a purchaser or seller, as the case may be, and have essentially completed their function at that time." (affidavit of Max Derbes, Jr. and Dalton L. Truax, Jr., Par. VII.)

In contrast to the Supreme Court's finding of the "inseparability of this particular legal service from the interstate aspects of real transactions . . . " (at 583), which interstate aspects were the financing of the purchase of real estate, the role of the defendant real estate brokers in financing such purchases is neither integral nor inseparable. In *Goldfarb, supra*, the evidence reflected mortgage loans by out-of-state lenders in the State of Virginia of some Seventy-five Million Dollars for the years 1970 and 1971, VA loan guarantees in Fairfax County alone of One Hundred Five Million

Dollars in 1972 and HUD insurance of home mortgages in Fairfax County of Twenty-three Million Dollars in 1972. The role played by real estate brokers in Louisiana in financing credit sales is minimal:

"8. Real estate brokers do not obtain and are not instrumental in obtaining the financing of credit sales except in situations in which the Vendor accepts a note secured by a Vendor's Lien as part of the purchase price. Essentially, and in the overwhelming majority of cases, the obtaining of financing is handled by the purchaser directly with the lending institution.

"9. Real estate brokers are in no way connected with or participate in examination of titles in connection with the sale of real estate or financing of such sales." (affidavits of Max Derbes, Jr. and Dalton L. Truax, Jr.)

Paraphrasing the district court's opinion in *Marston*, *supra*:

"The actions of defendants are purely local in nature, restricted to the Greater New Orleans Area. Any effect their actions would have on interstate commerce is remote and inconsequential . . ."

The prior and separate nature of the services rendered by the defendants herein, in contrast to the serv-

ices at issue in *Goldfarb*, *supra*, appears clearly from footnote 13 to the Supreme Court's opinion reading as follows:

"The County Bar relies on *United States v Yellow Cab Co.* 332 US 218, 91 L Ed 2010, 67 S Ct 1560 (1947), to support its argument that the 'essentially local' legal services at issue here are beyond the Sherman Act. There we held, *inter alia*, that intrastate taxi trips that occurred at the start and finish of interstate rail travel were 'too unrelated to interstate commerce to constitute a part thereof within the meaning of the Sherman Act.' 332 US, at 230, 91 L Ed 2010, 67 S Ct 1560. The ride to the railway station, we said, '[f]rom the standpoints of time and continuity . . . may be quite distinct and separate from the interstate journey.' *Id.*, at 232, 91 L. Ed. 2010, 67 S Ct 1560. Here, on the contrary, the legal services are coincidental with interstate real estate transactions in terms of time, and more important, in terms of continuity they are essential. Indeed, it would be more apt to compare the legal services here with a taxi trip between stations to change trains in the midst of an interstate journey. In *Yellow Cab* we held that such a trip was a part of the stream of commerce. *Id.*, at 228, 229, 91 L Ed 2010, 67 S Ct 1560." at 583.

The critical importance of this distinction becomes even clearer upon a reading of the entire paragraph from which the court quotes in its footnote:

"Here we believe that the common understanding is that a traveler intending to make interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination. *What happens prior or subsequent to that rail journey, at least in the absence of special arrangement, is not a constituent part of the interstate movement.* The traveler has complete freedom to arrive at or leave the station by taxi cab, trolley, bus, subway, elevated train, private automobile, his own two legs, or various other means of conveyance. Taxi cab service is thus but one of the many that may be used. It is contracted for independently of the railroad journey and may be utilized whenever the traveler so desires. From the standpoint of time and continuity, the taxi cab trip may be quite distinct and separate from the interstate journey. To the taxi cab driver, it is just another local fare." at 2020-21 (Emphasis added.)

Paraphrasing the Supreme Court's language in *Yellow Cab, supra*:

"A title examination is an integral part of an interstate transaction and is inseparable from

the interstate aspects of real estate transactions. What happens prior or subsequent to the title examination, at least in the absence of some special arrangement, is not a constituent part of the interstate transaction. The purchaser has complete freedom to make his agreement to purchase through a real estate broker, through a friend or relative of the owner, through an attorney at law representing the owner or directly with the owner himself, whether a builder or an occupant. Purchasing through a real estate broker is thus but one of many means of contracting to buy real estate. It is contracted for independently of financing the purchase where such financing is necessary and is entirely unrelated to such financing. From the standpoints of time and continuity, the agreement to purchase is quite distinct and separate from subsequent financing arrangements."

That *Goldfarb, supra*, effected no change in the law as to the intrastate nature of real estate brokerage, but was decided on its special facts, is clear from the decision of the Court of Appeals for the Eighth Circuit in *Diversified Brokerage Services, Inc. v. Greater Des Moines Board of Realtors*, 521 F.2d 1343 (8th Cir. 1975). Rejecting the plaintiff's contention that Goldfarb was controlling, the court affirmed dismissal on jurisdictional grounds of an action for alleged violation of the Sherman Act in refusing to admit the plaintiffs to membership. The court pointed out that the plaintiffs

"... made no effort to present evidence that defendants' intrastate activities *substantially affect* interstate commerce and therefore come within the purview of the Sherman Act even though they are not interstate in character." (authorities cited) (Emphasis applied.) at 1345.

Noting that the only basis for the plaintiffs' contention that the defendants were engaged in interstate commerce within the meaning of the Sherman Act was a few transactions to which out-of-state persons were parties, the court cited *Yellow Cab's, supra*, holding that a cab ride at the beginning or ending of a railroad journey "did not become an integral part of the stream of commerce" (at 1346) so as to come within the Sherman Act and observed that the cases uniformly held that

"... the mere movement of individuals from one state to another in order to utilize particular services does not transform those services into interstate services within the meaning of the Sherman Act." (citing authorities) at 1346.

The court pointed out that in *Goldfarb, supra*, the Supreme Court ruled that title examinations were an integral part of the interstate transactions and noted the "substantial volume of commerce involved" (at 1346) and observed that the plaintiffs had made no such showing. Consequently,

"... on this record, the most that is shown by plaintiffs is some interstate movement of individuals. That is not enough to establish jurisdiction in this case." at 1347.

The "nexus with interstate commerce" which the court found in the financing of real estate purchases in *Goldfarb, supra*, is clearly lacking in defendants' purely local activity of bringing sellers and purchasers together and *Goldfarb, supra*, furnishes no precedents.

The doctrine that there must be a showing of direct and substantial effect on interstate commerce was recently affirmed by the Court of Appeals for the Fifth Circuit in *Rosemound Sand and Gravel Co. v. Lambert Sand and Gravel Co.*, 469 F.2d 416 (5th Cir. 1972). Suit had been brought therein by a gravel producer against three competitors alleging that they had combined to interfere with an output-requirements agreement which the plaintiff company had arranged with a large construction company. The District Court had dismissed the complaint for lack of jurisdiction and the Fifth Circuit affirmed. The court's opinion is instructive:

"... The complaint contains only the barest conclusory statements of jurisdiction and *Rosemound* has added little to shore up its initially weak position. The answers to its interrogatories clearly show that the defendants mine and sell sand and gravel only for Louisiana purchasers and that none of the

defendants products are shipped out of state or enter the flow of commerce. The depositions of Rosemound's partners establish that its business never got off the ground to any commercially recognizable extent. As found by the trial court, this failure of any party to have any interstate business disposes of the Clayton Act and Robinson-Patman Act claims. (citing authorities) While these intrastate activities could be found to violate the Sherman Act if they had a direct and substantial effect on interstate commerce, (citing authorities) evidence introduced below establish no such connection.

"If a combination could be shown to have existed here, its only purpose and effect would have been to interfere with the intrastate Louisiana Sand and Gravel business." at 418-19.

CONCLUSION

As appears more fully from the foregoing discussion, there is clear authority for the proposition that the activities of real estate brokers such as defendants herein are purely local in nature and not subject to the Sherman and Clayton Acts. The allegation in paragraph XIV that defendants assist in securing financing and insurance involved with the purchase of real estate is controverted by the recitals of the affidavits of Messrs. Derbes and Triax and, as is more ful-

ly set forth hereinabove, financing and title insurance are entirely separate from the activities of real estate brokers. The conclusory allegations of paragraph XI that defendants' activities "are within the flow of interstate commerce and have an effect upon that commerce" are clearly insufficient to vest jurisdiction.

The complaint should be dismissed for lack of subject matter jurisdiction.

Respectfully submitted,
CHAFFE, McCALL,
PHILLIPS, TOLER &
SARPY

/s/ HARRY McCALL, JR.
Harry McCall, Jr.

(Names of Co-Counsel Omitted)

(Certificate of Service Omitted)

DEFENDANTS' EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Number and Title Omitted)

AFFIDAVIT

STATE OF LOUISIANA:

PARISH OF ORLEANS:

BEFORE ME, the undersigned authority, personally came and appeared MAX DERBES, JR., who, upon first being duly sworn, did depose and say:

1. I am a resident of the Parish of St. Tammany, State of Louisiana.
2. I am engaged in the business of a real estate broker with offices in the Parish of Orleans. I am duly licensed as a broker by the State of Louisiana since 1954.
3. I am the first vice president of the Real Estate Board of New Orleans, Inc. and I have served on the Board of Directors of said organization for 7 years.
4. In such capacities, I have been and am familiar in considerable depth with the workings of the real estate market in the State of Louisiana.

5. The Broker's License issued to me by the State of Louisiana authorizes me to perform the functions of a real estate broker in that State and no other; all real estate brokers in the State of Louisiana are similarly licensed.

6. There is no legal or other sort of requirement that the sale or purchase of real estate within the State of Louisiana be made through a real estate broker and I know of my own knowledge that in fact sales have been and are made without the interposition of real estate brokers; examples of such sales are direct sales by individual owners, by builders, by friends or relatives or through attorneys at law.

7. The essential function of a Louisiana real estate broker consists of counseling purchasers or sellers of real estate situated in the State of Louisiana, assisting them in establishing the price of properties and bringing about agreements to purchase and sell. Brokers earn their commissions upon procuring a purchaser or seller, as the case may be, and have essentially completed their function at that time.

8. Real estate brokers do not obtain and are not instrumental in obtaining the financing of credit sales except in situations in which the Vendor accepts a note secured by a Vendor's Lien as part of the purchase price. Essentially, and in the overwhelming majority of cases, the obtaining of financing is handled by the purchaser directly with the lending institution.

9. Real estate brokers are in no way connected with or participate in examination of titles in connection with the sale of real estate or financing of such sales.

/s/ MAX J. DERBES, JR.
MAX DERBES, JR.

(Jurat Omitted)

DEFENDANTS' EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Number and Title Omitted)

AFFIDAVIT

STATE OF LOUISIANA:

PARISH OF ORLEANS:

BEFORE ME, the undersigned authority personally came and appeared, DALTON L. TRUAX, JR. who upon first being duly sworn, did depose and say:

1. I am a resident of the Parish of Jefferson, State of Louisiana.
2. I am engaged in the business of real estate broker with offices in the Parishes of Orleans, St. Tammany

and Jefferson. I am duly licensed as a broker by the State of Louisiana since 1960.

3. I am the Secretary of the Real Estate Board of New Orleans, Inc. and have served on the Board of Directors of said organization for five (5) years.

4. In such capacities I have been and am familiar in considerable depth with the workings of the real estate market in the State of Louisiana.

5. The Broker's License issued to me by the State of Louisiana authorizes me to perform the functions of a real estate broker in that State and no other; all real estate brokers in the State of Louisiana are similarly licensed.

6. There is no legal or other sort of requirement that the sale or purchase of real estate within the State of Louisiana be made through a real estate broker and I know of my own knowledge that in fact sales have been and are made without the interposition of real estate brokers; examples of such sales are direct sales by individual owners, by builders, by friends or relatives or through attorneys at law.

7. The essential function of a Louisiana real estate broker consists of counseling purchasers or sellers of real estate situated in the State of Louisiana, assisting them in establishing the price of properties and bringing about agreements to purchase and sell. Brokers

earn their commissions upon procuring a purchaser or seller, as the case may be, and have essentially completed their function at that time.

8. Real estate brokers do not obtain and are not instrumental in obtaining the financing of credit sales except in situations in which the Vendor accepts a note secured by a Vendor's Lien as part of the purchase price. Essentially, and in the overwhelming majority of cases, the obtaining of financing is handled by the purchaser directly with the lending institution.

9. Real estate brokers are in no way connected with or participate in examination of titles in connection with the sale of real estate or financing of such sales.

/s/ DALTON L. TRUAX, JR.
DALTON L. TRUAX, JR.

(Jurat Omitted)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Mar. 25, 1976

MOTION FOR EXTENSION OF TIME TO
ANSWER DEFENDANTS' MOTION TO DISMISS

Plaintiffs herein request this Court to grant an extension of time to answer defendants' motion to dismiss, up through and including April 7, 1976, and to

continue the date for hearing this motion from March 31 to April 28, 1976, for the following reasons:

1. Pursuant to instructions from this Court, counsel for all parties agreed to a pretrial order containing a schedule for the orderly progress of this cause. This order was filed on January 5, 1976, and was signed as an order by this Court the same day.

2. Paragraph 1 of the pretrial order required that any motion by a defendant to quash service or object to the jurisdiction or venue of this Court be filed on or before sixty (60) days from January 5, 1976. Plaintiffs' reply to such motion shall be filed within thirty (30) days of the service of said motion. Defendants' reply, if any, is to be filed twenty (20) days thereafter.

3. Defendants filed a motion to dismiss for lack of subject matter jurisdiction with this Court on March 5, 1976, and plaintiffs received copies of this motion through letter dated March 8, 1976. Defendants noticed the motion for March 31, 1976.

4. Pursuant to the agreed timetable, plaintiffs are entitled to a thirty day time frame within which to reply after service of the motion or up through and including April 7, 1976.

5. Furthermore, pursuant to the pretrial order, plaintiffs bear the responsibility of noticing said motions for hearing.

6. Defendants, through letter to plaintiffs' counsel dated March 23, 1976, have suggested that in order to comply with the applicable time frames, that their motion originally noticed for hearing on March 31, 1976, be rescheduled for either April 28, 1976 or May 26, 1976.

Respectfully submitted,

NELSON, NELSON &
LOMBARD, LTD.

/s/ PATRICIA SAIK
Patricia Saik
John P. Nelson, Jr.

ORDER

IT IS HEREBY ORDERED that defendants' motion to dismiss, which is set for hearing on March 31, 1976, be reset for April 28, 1976, and that plaintiffs' reply to defendants' motion to dismiss be filed by April 7, 1976.

New Orleans, Louisiana, this 25th day of March, 1976.

/s/ EDWARD J. BOYLE, SR.
UNITED STATES DISTRICT
JUDGE

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Apr. 8, 1976

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

I. *Background and Procedural Posture*

Plaintiffs, buyers and sellers of residential property in the greater New Orleans area, have alleged that two trade associations and their broker members (realtors) have conspired to fix the price of brokering services offered to prospective buyers and sellers of residential real property in the greater New Orleans area.

On January 5, 1976, counsel for all parties filed a proposed pretrial order to accommodate the complexity of this lawsuit and to establish an orderly procedural timetable. The proposed timetable became an order of this Honorable Court the same date. (See record, pretrial order signed by Honorable Edward J. Boyle on the 5th day of January, 1976.) This order precludes plaintiffs initiating discovery until all pretrial motions contemplated in paragraphs 1, 2 and 3 have been argued and disposed of by ruling. At that point, discovery is permitted only to determine whether this action is maintainable as a class action (see order, paragraph 4, page 3).

Plaintiffs have abided by this order and have initiated no discovery; thus plaintiffs must rely in large part on the jurisdictional allegations in their complaint to support their opposition to defendants' present motion to dismiss. Plaintiffs have, however, submitted several affidavits to support a showing that defendants' brokering activities, an integral part of the entire real estate transaction, takes place in interstate commerce and substantially affects that commerce (see complete discussion, *infra*).

Defendants have jointly moved to dismiss this Sherman Act¹ complaint on the basis that the brokering services which they dispense, or, in the case of the defendant boards who supervise, foster, aid, abet and educate, are neither within the flow of commerce nor affect interstate commerce.² Defendants substantiate this posture through two affidavits purporting that brokering services are wholly discrete from the panoply of actions involved in the purchase and sale of residential real property from beginning to end.

Plaintiffs offer the following memorandum to refute this position. To briefly summarize at the outset, it is plaintiffs' position that a price fix presumes satisfaction

¹ 15 U.S.C. 1 (1964).

² Generally speaking, under the antitrust laws, the interstate commerce element of the offense may be based on the fact that the acts complained of are within the flow of interstate commerce or that the activity substantially affects interstate commerce. *Las Vegas Merchant Plumbers Ass'n v. United States*, 210 F. 2d 732 (9 Cir. 1954).

of Sherman Act jurisdictional requirements. Should the Court find this position insufficient, plaintiffs will show that defendants' activities are an integral part of interstate commerce, that is, that defendants' brokering services cannot be divorced from the economic continuum of interstate activities necessary to culminate a real estate transaction. Not only do defendants service out-of-state buyers and sellers, but their work requires the use of telephone and mail communication across state lines. Further, their services include offering assistance to both procure loans from interstate lending sources and to obtain title insurance from out-of-state insurance carriers.

Although the purchase and sale of realty is localized to the extent that real property is by nature an immovable, the brokering activities can and do move in interstate commerce and have a substantial effect on that commerce. But again, even if the services include no more than bringing a buyer and seller together, this activity, because it is inextricably bound up with the entire buy/sell transaction, is sufficient to confer jurisdiction.

II. *Factual Summary*

Before turning to a full discussion of applicable legal principles which firmly support a showing of subject matter jurisdiction here, plaintiffs must reemphasize and briefly explain each jurisdictional allegation contained in their complaint. Of course, for purposes of a

motion to dismiss, well-pleaded material allegations must be taken as true. See generally, 2A Moore's Federal Practice, paragraph 12.08. At this juncture, it cannot be fairly said that in a factually complex suit such as this the standard for dismissal has been met — i.e., that it appears to a certainty that plaintiffs are entitled to no relief under any state of facts which could be proved in support of the claim.

Generally, courts like the Fifth Circuit, see, e.g., *McBeath v. Interamerican Citizens for Decency Committee*, 374 F.2d 359 (5 Cir. 1967), will not permit dismissal for lack of jurisdiction where the jurisdictional issue is closely entwined with the substantive one of whether an anti-trust violation has actually occurred. Given these procedural precautions, plaintiffs submit that defendants' motion to dismiss should be viewed with particular caution.

Paragraph XI of plaintiffs' complaint alleges generally that defendants' activities are within the flow of interstate commerce and affect that commerce. This allegation is substantiated by more particularized allegations pertaining to the volume of business carried on, the interstate movement of customers, and finally, the interstate movement of financing and title insurance services.

A. Defendants Account For A Substantial Proportion Of Real Estate Brokering Services Performed In Connection With

The Purchase And Sale Of Real Estate In Greater New Orleans (Complaint, paragraph XII).

Absent discovery, plaintiffs are unable to provide the Court with the percentage of real estate transactions which take place through the services of the defendant realtors. Yet, even at this early juncture, defendants cannot deny that it is substantial. For example, for the fiscal year ending August 31, 1975, defendant Stan Weber & Associates, Inc. reported residential sales of \$56,340,345.00. *The Times-Picayune*, Sunday, October 19, 1975, front page classified section. Plaintiffs intend to prove that the other defendant realty companies likewise occupy a market position which in no way can be characterized as "inconsequential". Although defendants argue that no one is required by state law to use their services, the fact is that thousands of persons do turn to the realtor — a professional — to assist in the now sophisticated and oftentimes complicated buy/sell transaction.

B. Many Persons Using The Services Of The Defendants In Connection With The Purchase And Sale Of Real Estate Are Persons Moving Into And Out Of The Greater New Orleans Area.

One of the plaintiffs, Irving Koch, lived out-of-state at the time that he enlisted a realtor to assist in his purchase of residential property in the New Orleans

area (see attached affidavit of Koch). The brokering services rendered not only included actually locating suitable property, but the realtor utilized assisted Mrs. Koch with prices, marketing, information and financing.

Again, at this stage of the litigation, plaintiffs have not yet determined the actual percentage of transactions within the limitation period of this suit that involve out-of-state buyers and sellers. On information and belief, plaintiffs submit that this figure is sizeable. Taking a national statistic, in any one year, nearly 36 million people — about 18% of all those in the United States — change residences. About 6.6 million move across state lines. Cited in Austin, Real Estate Boards and Multiple Listing Systems As Restraints of Trade, 70 Columbia L. Rev. 1325, 1334, footnote 63. And support exists to show that defendants recognize and attempt to capitalize on this substantial interstate movement of persons. For instance, the *Times-Picayune* reported on March 28, 1976, section 5, page 19, that defendant Gertrude Gardner has opened a special Relocation Center designed to assist companies in relocating transferred personnel and to handle paper work involved in sales. Efforts like this just begin to demonstrate the importance that realtors play in securing and/or disposing of residential property for persons moving into and out of metropolitan New Orleans.

C. Defendants Assist Their Clients In Securing Financing And Insurance Involved With The Purchase Of Real Estate

In The Greater New Orleans Area. Such Financing And Insurance Are Obtained From Sources Outside The State Of Louisiana And Move In Interstate Commerce Into The State Of Louisiana Through The Activities Of The Defendants.

Both the United States Department of Housing and Urban Development and the Veterans Administration make substantial loan guarantees for the purchase of homes in metropolitan New Orleans (see attached affidavits of Paul Griener, Loan Guaranty Officer for the VA, and Angel Miranda, Area Economist for HUD). In 1975 alone, VA insured loans for the parishes of Jefferson and Orleans totaled over 55 million dollars. FHA loan operations for 1973 in Orleans Parish exceeded 6 million dollars. In short, there is no question that substantial amounts of financing necessary for the purchase of residential property flow into Louisiana from out-of-state sources.

Plaintiffs have alleged that realtors assist in procuring funds through interstate lending sources and in obtaining title insurance from out-of-state insurance carriers. Defendants have stated that brokers basically do not engage in either obtaining financing or title insurance (see defendants' affidavits of Max Derbes, Jr. and Dalton L. Truax, Jr.). But, at this point in the litigation

tion, important facts as yet are undeveloped.³ Once discovery is initiated, a more complete picture of the realm of brokering services offered through defendants will be obtained and offered to support both jurisdictional and substantive Sherman Act requirements.

Finally, it is plaintiffs' position that given the allegation of a price fix, it is not a prerequisite to Sherman Act jurisdiction that defendants actually procure financing or title insurance. It is sufficient to show that defendants' brokering activities are an integral part of the entire economic transaction of a real estate purchase and sale and that their concerted activity disturbs the interstate flow of persons, financing, and insurance services necessary to complete the real estate transaction.

³ Despite the fact that opposing affidavits have been submitted and the Court will be considering some material outside the pleadings, plaintiffs strongly urge that dismissal on the basis of a motion for summary judgment would be improper. Not only are material facts in dispute, but other material facts are as yet undiscovered. "Rule 12(b)(6) requires that before a motion to dismiss may be treated as one for summary judgment the parties be given 'reasonable opportunity to present all materials made pertinent to such by Rule 56'". 6 Moore's Federal Practice, paragraph 56.02 [3], pages 56-32. Incidentally, at least one basis for distinguishing *Page v. Work*, 290 F. 2d 323 (9 Cir. 1961), a case on which defendants rely, is on procedural grounds. In *Page*, the parties in effect consented to a separate trial on the issue of jurisdiction and the court had before it a range of affidavits, oral testimony and the like. Since discovery here has not yet been initiated, plaintiffs are unable to offer the Court all pertinent evidence and in no way have consented to "a separate trial on the issue of jurisdiction".

III: *Plaintiffs Have Satisfied The Sherman Act Jurisdictional Requirements.*

Sherman Act jurisdiction requires first that the alleged restraint emanate from a "trade" and second, that the restrained commerce be "among the several states". See, 15 U.S.C. 1 (1964). Defendants have challenged the second requirement,⁴ urging that the activity in which they engage begins and ends with bringing together a buyer and seller. In essence, they argue that their brokering services are purely local in nature and have only a remote or inconsequential effect on interstate commerce. It follows, therefore, that their activities, even if illegal, cannot be reached by federal prohibitions.

It must be remembered that when Congress exercised its commerce power under the Sherman Act, it utilized this power to its fullest extent. See, e.g., *United States v. Frankfort Distilleries, Inc.*, 324 U.S. 293, 298 (1945). ("Congress, in passing the Sherman Act, left no area of its constitutional power unoccupied; it 'exercised all the power it possessed' "). As such, intrastate activity is within the scope of federal regulatory power if that activity "exerts a substantial economic effect on inter-

⁴ Indeed, questioning the first jurisdictional prerequisite would be near useless. In 1950, the U.S. Supreme Court clearly settled the issue of whether real estate brokering is a "trade" within the meaning of Section 1 of the Sherman Act. In *United States v. National Association of Real Estate Boards*, 339 U.S. 485 (1950), the court refused to exempt the real estate industry from Sherman Act coverage on the basis that it was not a "trade".

state commerce." *Wickard v. Filburn*, 317 U.S. 111, 125 (1942). Alternately, if the violative acts occur within the flow of commerce, Sherman Act jurisdiction is found as well. See, *Las Vegas Merchant Plumbers Ass'n v. United States*, 210 F. 2d 732 (9 Cir. 1954), for an enunciation of these alternate bases for jurisdiction. These concepts will be discussed in detail, *infra*. But beforehand, plaintiffs address an important issue concerning jurisdictional requirements where a price fix is alleged.

A. Where A Price Fix Is Alleged, Since Proof Of Interstate Effects Need Not Be Proved To Establish The Substantive Offense, Courts Can Presume Satisfaction Of Sherman Act Jurisdictional Requirements.

The heart of plaintiffs' complaint alleges that defendants have combined and conspired together to fix, control, raise and stabilize the price of brokering services. (Complaint, paragraph XVI). Stated another way, the customers who utilize defendants' services do not enter a competitive market. Instead, purchasers and sellers entering the market are confronted with a fixed brokerage fee, notwithstanding the actual value of the services performed or the realtor who performs the service. On information and belief, plaintiffs submit that in the vast majority of residential transactions, the brokering fee remains constant.

Because plaintiffs have alleged a price fix conspiracy, it is unnecessary for plaintiffs to prove the

degree that the agreement affects interstate commerce. Under the Sherman Act, a combination formed for the purpose and with the effect of raising, depressing, or stabilizing the price of a commodity in interstate commerce is illegal *per se*. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940). Indeed, proof of the degree or effect that concerted activity has on interstate commerce is not a constitutional or jurisdictional prerequisite to the assertion of federal power. *Socony-Vacuum*, *supra*, at 485, note 59. In other words, the conduct itself, that is, the agreement to fix prices, is considered so harmful that additional proof of effects on interstate commerce is unnecessary. The adverse competitive effects are conclusively presumed from the mere existence of the conduct. See also, *Burke v. Ford*, 389 U.S. 320, 321-322 (1967). (Court presumed *per se* violation inevitably affected interstate commerce); *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U.S. 219, 240-41 (1948) (inevitable effect of price fix agreement is to reduce competition).⁵

⁵ Although defendants rely on *Manion v. Jefferson Board of Realtors*, Civil Action No. 73-2604, for support that real estate brokering is a purely local activity that has only a remote effect on commerce, this case is inapposite here. Before ruling, Judge Gordon was twice informed that *Manion* had not alleged price-fixing (see *Manion* transcript, pp. 10, 12). Therefore, the court was not confronted with the legal effect of alleging a *per se* violation. The *Manion* case can also be distinguished on factual grounds. To support a jurisdictional showing, *Manion* apparently relied almost exclusively on a showing of incidental activities, such as purchasing supplies in interstate commerce (*Manion* transcript, p. 25). Plaintiffs here allege a far more substantial basis for interstate activity. It is also important to note that realtors themselves, the real links in the real estate transaction, were not named as defendants. As such, the court took no consideration of the actual brokering activities and the part these activities play in interstate commerce.

B. Defendants' Brokering Activities Take Place In Commerce And Affect Interstate Commerce.

Although plaintiffs contend it is not necessary to prove the interstate effects which defendants' alleged price-fixing conspiracy generates, plaintiffs can demonstrate that defendants' brokering activities take place in commerce, and are an integral part of that commerce.

Plaintiffs wish to stress that brokering services are an intangible⁶ and as such, it becomes more difficult to conceptualize the movement of this product across state lines. It is partly because of this elusiveness of definition that plaintiffs demonstrate the interstate nature of the service by describing the specific acts of contact and communication in which the realtors engage. The conclusory description of "merely bringing a buyer and seller together" downplays the numerous contacts, many of which are interstate, which a realtor initiates and receives in his or her effort to successfully conclude a buy/sell agreement and thus earn a commission.

⁶ There is no problem with the fact that it is "services" that constitute the economic continuum and affects interstate commerce. See, e.g., *Associated Press v. United States*, 326 U.S. 1 (1945); *United States v. Southeastern Underwriters Association*, 322 U.S. 533, 546 (1944).

Southeastern Underwriters, supra at 539, is also important for the proposition that activities are in commerce where substantial quantities of documents, communication and money travel across state lines. Such activity is generated here by the fact that realtors service out-of-state buyers and sellers.

Practically speaking, a buyer cannot purchase a house without financing. As described above, millions of dollars flow from out-of-state to enable willing buyers to also become able ones. Similarly, a buyer wants a piece of land free of title defects. So does that buyer's bank or other lending institution. Taking the other side, a seller simply cannot sell without some guarantee that the purchaser will not later face a lawsuit by an heir or prior owner. The realtor is in effect caught in the middle of these demands and/or prerequisites to culminating a contract between a buyer and a seller. Even if the realtor does not participate in obtaining financing or insurance, which plaintiffs do not here concede, that realtor is no less an integral and oftentimes indispensable part of that entire economic process. It is on this basis that plaintiffs urge that defendants' brokering services clearly are intertwined with interstate commerce — the movement of persons, the flow of money, the establishment of communications, the struggle for business. A realtor earns a commission only upon the successful culmination of a number of transactions, many of which flow in commerce. Because the brokering service is thus such an integral part of the successful culmination of the buy/sell contract, a price-fixing conspiracy for the costs of brokering services substantially affects commerce for Sherman Act purposes.⁷

⁷ Cf. *Mandeville Island Farms, Inc. v. American Crystal Sugar Company*, 344 U.S. 219 (1948). The court in *Mandeville Farms* set up a single formula for determining whether commerce was affected within the meaning of the Sherman Act: the relationship between the conduct complained of and the economic totality adversely affected by that conduct. Plaintiffs here request this Court to do the same.

Plaintiffs submit that the activities described above are sufficient to confer Sherman Act jurisdiction. The United States Supreme Court's recent pronouncement in *Goldfarb v. Va. State Bar*, — U.S. —, 44 L. Ed. 2d 572 (1975), provides sound precedent for upholding subject matter jurisdiction here. Chief Justice Burger (for a unanimous court) thoroughly answered the issue of whether the services performed by attorneys in examining titles in connection with financing the purchase of real estate are in interstate commerce or affect commerce. The court relied on district court findings of fact (see *Goldfarb v. Va. State Bar*, 355 F. Supp. 491, 494 (E.D. Va. 1973) and noted that a significant portion of funds furnished for the purchasing of homes in Fairfax County comes from without the State of Virginia and significant amounts of loans on Fairfax County real estate are guaranteed by the United States Veterans Administration and Department of Housing & Urban Development, both headquartered outside Virginia. *Goldfarb*, 44 L. Ed. 2d at 583.⁸ Further, the court soundly rejected defendant's view that the legal services performed were wholly intrastate and could not therefore substantially affect commerce.

⁸ Plaintiffs wish to point out that procedurally speaking the jurisdictional issue in *Goldfarb* was apparently reserved until the parties had ample time for pretrial discovery and a full presentation of evidence could be made at trial. At this point, plaintiffs are unable to offer the entire range of evidence, which they can and will produce after discovery has commenced. However, the allegations in the complaint, especially paragraph XIV, speak directly to the large volume of interstate loans and for purposes of this motion, should be taken as true.

"... the transactions which create the need for the particular legal services in question frequently are interstate transactions. The necessary connection between the interstate transactions and the restraint of trade provided by the minimum fee schedule is present because, in a practical sense,⁹ title examinations are necessary in real estate transactions to assure a lien on a valid title of the borrower. In financing realty purchases lenders require 'as a condition of making the loan, that the title to the property involved be examined . . . ' Thus a title examination is an integral part of an interstate transaction.

* * *

"Given the substantial volume of commerce involved, and the inseparability of this particular legal service from the interstate aspects of real estate transactions we conclude that interstate commerce has been sufficiently affected. See *Montague Co. v. Lowry*, 193 U.S. 38, 45-46 (1904); *U.S. vs. Women's Sportswear Ass'n*, 336 U.S. 460, 464-465 (1949)."

Goldfarb, 44 L. Ed. 2d at 583. The basis on which defendants herein seek to distinguish *Goldfarb* concerns whether brokering services are sufficiently entwined

⁹ The court notes here that it is in a practical sense that we must view an affect on interstate commerce, citing *Swift and Co. v. United States*, 196 U.S. 375, 398 (1905) and *Mandeville Farms v. American Crystal Sugar Co.*, 334 U.S. 219, 233 (1948).

with, inter alia, the interstate movement of funds which are necessary to finance the underlying purchase and sale transaction.

Plaintiffs strongly believe that pragmatism and the sophistication of today make impossible the severance of brokering services which defendants offer from the interstate aspects of a real estate transaction. For example, although it is true that the use of brokering services are not required by state law, one cannot ignore the fact that defendants actively solicit participation in the real estate transaction and that a substantial volume of real estate transactions occur through defendant realty companies.

Furthermore, it must be stressed again that realtors are acutely concerned with whether a potential buyer is able to obtain financing. Such financing is essential to the culmination of the sale. Absent financing, the realtor will earn no brokering commission. In addition, no commissions are earned without an unencumbered title, guaranteed by a title search and/or title insurance. Finally, the substantial movement of persons into and out of the greater New Orleans area who are seeking to either buy or sell residential property creates a healthy demand for brokering services. Plaintiffs submit that defendants' activities in matching buyers who are ready, willing and able to purchase, with sellers who have chosen to use professional services to facilitate the sale of their property, is in the words of the *Goldfarb* court, "an integral part of an interstate transaction".

Diversified Brokerage Services, Inc. v. Greater Des Moines Board of Realtors, 521 F. 2d 1343 (8 Cir. 1975), does not assist defendants here. The plaintiff in *Diversified Brokerage*, seeking admittance to the realty board, charged the board with a bottleneck boycott or a concerted refusal to trade. To support a jurisdictional showing, plaintiff showed that five real estate transactions (from a sample of 16% of the listings) involved persons residing out of state. Absolutely no other evidence of interstate activity was provided and, on this basis alone, the court upheld the district court's dismissal of the complaint. Three points which adequately distinguish the case from the instant one must be made.

First, and most importantly, the plaintiffs here do not rely solely on the interstate movement of persons to support a jurisdictional showing. Interstate movement of funds for loans and insurance are also present. This is particularly significant since the *Diversified Brokerage* court, though holding that the interstate movement of persons was not enough to confer subject matter jurisdiction, added a caveat:

"We emphasize the *limited nature of our holding*. Services affecting real estate, such as brokerage services, may, *depending on the evidence*, either constitute interstate activities or have no nexus with interstate commerce. (Citing *Goldfarb*, 95 S. Ct. at 2012). In the instant case, plaintiff presented extremely limited evidence and failed to show any interstate character to

these real estate transactions." *Diversified Brokerage*, supra, at 1347.

Secondly, the court noted that plaintiffs had been afforded full opportunity for discovery.¹⁰ This, of course, is not the situation here.

Finally, unlike the plaintiff in *Diversified Brokerage*, who conceded in district court that the substantive and jurisdictional issues were not so intertwined as to preclude a jurisdictional ruling prior to trial on the merits, plaintiffs here strongly disagree and make no such concession at this early juncture.

To briefly summarize through a descriptive analogy, plaintiffs submit that the defendants are the chemists who mix the substantial interstate and intrastate elements of a real estate transaction to form the "sale" compound. The defendants cannot deny that their catalytic complicity affects the flow of interstate commerce.

IV. Summary and Conclusion

Plaintiffs submit that defendants' motion to dismiss should be denied based on the following:

¹⁰ Suit was filed March 24, 1971, and was dismissed three years later, after plaintiffs had been accorded a full opportunity to present more facts. For a complete procedural explanation, see *Diversified Brokerage*, supra, at 1347, footnote 3.

1. Procedurally speaking, motions to dismiss are strongly disfavored, particularly in antitrust suits where the jurisdictional and substantive elements of proof comeingle. Because pretrial discovery has thus far been precluded pursuant to the pretrial order, plaintiffs have not yet had a full opportunity to substantiate the jurisdictional allegations in their complaint. But taken as true, as they must for purposes of this motion, the allegations support the requisite jurisdictional requirements.¹¹

¹¹ Since the Court has before it materials outside the pleadings (i.e., various affidavits submitted by both plaintiffs and defendants), the motion to dismiss may be converted to one for summary judgment.

In support of plaintiffs' position that a summary judgment motion in this case should be denied, besides the comments in footnote 3, supra, plaintiffs offer the following:

"In a summary judgment situation, the court may consider admissions and facts conclusively established but all reasonable doubts touching the existence of a genuine issue as to material fact must be resolved against the movant." *United States v. Farmers Mutual Insurance Ass'n of Kiron, Iowa*, 288 F. 2d 560, 562 (8 Cir. 1961).

"The motion for summary judgment may be made by any party in any type of action. But by its nature summary judgment is apt to be ill-adapted to cases of a complex nature or to those that involve constitutional or other large public issues, which often need the full exploration of trial. A difficult question of law does not, however, warrant the denial of a motion for summary judgment, subject to the following important qualification: that the material factual issues are not in dispute and furnish an adequate basis for the application of the proper legal principles." 6 Moore's Federal Practice, paragraph 56.15 [1-0], p. 56-398.

Plaintiffs submit that where, as here, the case itself is complex, the depth and range of the brokering services rendered are in dispute, and the parties have not yet commenced discovery, defendants' motion should be denied.

2. Because plaintiffs have alleged a price-fixing conspiracy, once it is demonstrated that defendants' activities occur in commerce, the adverse effect on interstate commerce follows as a matter of law. At least part of defendants' brokering activities cross state lines, and it can be presumed that interstate commerce is affected thereby.

3. Even viewing defendants' brokering activities as wholly intrastate ones, these activities cannot practically be divorced from the interstate movement of conventional and government financing, title insurance services and the movement of buyers and sellers into the greater New Orleans area. The realtor cannot earn a commission unless the buyer has financing and the seller produces marketable title. As such, the realtor's services depend on and affect the interstate flow of both services and people.

Based on the foregoing memorandum, plaintiffs request this Court to deny defendants' motion to dismiss.

Respectfully submitted,

NELSON, NELSON &
LOMBARD, LTD.
A Professional Law Corporation

/s/ PATRICIA SAIK
Patricia Saik, Trial Attorney
John P. Nelson, Jr.,
Trial Attorney

(Certificate of Service Omitted)

STATE OF LOUISIANA
PARISH OF ORLEANS

BE IT KNOWN, that on the 7th day of April, 1976, before me, Notary, duly commissioned in the Parish of Orleans and therein residing, personally came and appeared:

IRVING HIRSCH KOCH

who first being sworn did depose and say:

That he is a resident of the Parish of Orleans, of age, and married and resides at 4141 State Street Drive, New Orleans, Louisiana;

That he is a named plaintiff in Civil Action No. 75-3402 entitled James Jefferson McLain vs. New Orleans Real Estate Board, et. al.;

That prior to moving to New Orleans he and his wife were residents of Dayton, Ohio;

That he purchased residential real estate in the City of New Orleans through the assistance and services of a Realtor member of the New Orleans Real Estate Board;

That in procuring his residential real estate, his wife, Susan Goldstein Koch, made several trips to New Orleans to search for suitable homes prior to moving to New Orleans in 1970;

That on these trips and pursuant thereto a real estate broker personally or through an authorized agent assisted her with prices, marketing, information, and financing.

THUS DONE AND SAID BEFORE ME, Notary, on the 7th day of April, 1976, in my office in Orleans Parish before the undersigned competent witnesses after due reading of the whole.

/s/ IRVING H. KOCH
IRVING HIRSCH KOCH

(Jurat and Witnesses Omitted)

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF ORLEANS

I, PAUL GRIENER, Loan Guaranty Officer for the Loan Guaranty Division of the Veterans Administration, which administers all V.A. programs in the State of Louisiana, do hereby declare that the loan guaranties for the Parish of Jefferson and the Parish of Orleans, from 1973 through 1975, as well as a summation of total loan guaranties from 1945 through December, 1975, are accurately presented in Schedule A which is attached. These figures are based on our records and I

feel that they accurately represent V.A. loan guaranties during the applicable period.

New Orleans, Louisiana, this 2nd day of April, 1976.

/s/ PAUL GRIENER
PAUL GRIENER

I have signed Schedule 1 to indicate its authenticity.

/s/ PAUL GRIENER
PAUL GRIENER

WITNESSES

/s/ IRVING H. KOCH
/s/ MARGARET SAUCHON

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, duly commissioned and qualified within and for the State and Parish aforesaid, personally came and appeared IRVING H. KOCH, who being by me first duly sworn, did depose and say:

That he was a witness, along with Margaret Souchon to the above and foregoing instrument; that he saw

Paul Griener sign the same in his presence and that of the other witness, and knows of his own knowledge that the said parties executed said instrument of their own free will and accord, for the uses, purposes and benefits therein expressed.

IN WITNESS WHEREOF, the said appearer has executed this acknowledgment in my presence and in the presence of the undersigned competent witnesses on this 2d day of April, 1976.

/s/ IRVING H. KOCH
IRVING H. KOCH

WITNESSES:

/s/ SHIRLEY LOVE

/s/ MATILE B. GOLDBERG

/s/ MICHAEL A. DENNER
NOTARY PUBLIC

SCHEDULE A

V.A. INSURED LOANS (LOAN GUARANTIES)

APPROX. 1945 - DEC. 1975:

JEFFERSON:	24,706 Homes \$423,813,120.00
ORLEANS:	21,209 Homes \$296,379,717.00

1972 — NOT AVAILABLE

1973:

JEFFERSON:	1066 Homes \$27,157,118.00
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ORLEANS:	807 Homes \$19,132,060.00
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1974:

JEFFERSON:	978 Homes \$26,804,480.00
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ORLEANS:	710 Homes \$19,128,685.00
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1975:

JEFFERSON:	1096 Homes \$33,333,820.00
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ORLEANS:	674 Homes \$20,126,700.00
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COMPUTER STATS FROM:

New Orleans Regional Office of V.A.
Loan Guaranty Division

Paul A. Griener
Loan Guaranty Officer
Veterans Administration
April 2, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

MINUTE ENTRY

Filed: Apr. 28, 1976

CAUSE

SHERMAN ACT & CLAYTON ACT
UNLAWFUL CONSPIRACY TO RESTRAIN INTER-
STATE TRADE & COMMERCE IN THE OFFERING
FOR SALE AND SALE OF REAL ESTATE BROKER-
ING SERVICES.

WEDNESDAY, APRIL 28, 1976 10:00 A.M.
(M & O Cont'd 3/25/76)

MOTION OF DEFENDANTS, REAL ESTATE
BOARD OF NEW ORLEANS, INC., ET AL, TO DIS-
MISS.

Motion to be continued on written motion.

DATE OF ENTRY: APR. 28, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Apr. 27, 1976

MOTION AND ORDER

Now into Court through their undersigned counsel come Defendants herein, and on suggesting to the Court that the pre-trial order entered by the Court and approved by counsel for the Plaintiffs and Defendants on 5 January 1976 provides in Paragraph 1 that any motion by Defendants to quash service or to object to the jurisdiction or venue of this Court shall be filed on or before sixty days from the date hereof; Plaintiffs' reply shall be filed within thirty days of service of said motion; and Defendants' response shall be filed within twenty days; and on further suggesting to the Court that Defendants filed a motion to dismiss for lack of jurisdiction on 5 March 1976; and on further suggesting that on Plaintiffs' motion, this Court granted an extension of time to allow Plaintiffs through 7 April 1976 to answer Defendants' motion to dismiss, which answer was filed on or about 7 April 1976; and on further suggesting to the Court that by the same motion, Plaintiffs requested and obtained a continuance of the hearing on said motion to dismiss to 28 April 1976; and on further suggesting to the Court that under the schedule set out in the pre-trial order and referred to hereinabove, Defendants' reply to Plaintiffs' answer would be due on the day of or the day before said hear-

ing; and on further suggesting to the Court that the parties hereto have agreed to a continuance of the hearing on Defendants' motion to dismiss to 26 May 1976, and to an amendment of Paragraph 1 of the pre-trial order to extend the time within which Defendants may reply to Plaintiffs' answer to the motion to dismiss through 14 May 1976, Defendants move this Honorable Court to enter an order amending Paragraph 1 of the pre-trial order in conformity with the foregoing and continuing the hearing on Defendants' motion to dismiss to 26 May 1976 at 10:00 a.m. or as soon thereafter as counsel may be heard.

CHAFFE, McCALL,
PHILLIPS, TOLER &
SARPY

/s/ HARRY McCALL, JR.
Harry McCall, Jr.
1500 First Nat'l Bank of
Commerce Bldg.
New Orleans, La. 70112
(529-3121)

ORDER

IT IS HEREBY ORDERED that Defendants' motion to dismiss, which is set for hearing on 28 April 1976, be reset for 26 May 1976, and that Defendants' reply to Plaintiffs' answer to the motion to dismiss be filed by 14 May 1976.

New Orleans, Louisiana, this 28th day of April, 1976.

/s/ EDW. J. BOYLE, SR.
UNITED STATES DISTRICT
JUDGE

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

MINUTE ENTRY
BOYLE, J:

(Filed: May 12, 1976)

IT IS ORDERED BY THE COURT that the following motions presently fixed for hearing on Wednesday, May 26, 1976 at 10:00 A.M. be, and the same are hereby continued to Wednesday, June 2, 1976 at 10:00 A.M.

* * * *

C.A. 75-3402 — JAMES JEFFERSON McLAIN, ET AL
v. REAL ESTATE BOARD OF NEW ORLEANS, INC.,
ET AL

ATTORNEYS: John P. Nelson, Jr., Esq., and
Ms. Patricia Saik, and
Raymond J. Munna, Esq.
Ms. Cynthia Samuel

Arthur L. Ballin, Esq., and
 Frank C. Dudenhefer, Esq.
 Edward F. Wegmann, Esq., and
 F. P. Westenberger, Esq.
 Harry S. Redmon, Jr., Esq., and
 Rutledge Clement, Jr., Esq.
 Leon Sarpy, Esq., and
 Gerald Wasserman, Esq.
 Charles F. Barbera, Esq.

* * * *

/s/ EDW. J. BOYLE, SR.
 UNITED STATES DISTRICT
 JUDGE

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: June 2, 1976

MINUTE ENTRY

CAUSE

SHERMAN ACT & CLAYTON ACT
 UNLAWFUL CONSPIRACY TO RESTRAIN INTER-
 STATE TRADE & COMMERCE IN THE OFFERING
 FOR SALE AND SALE OF REAL ESTATE BROKER-
 ING SERVICES.

WEDNESDAY, JUNE 2, 1976

MOTION OF DEFENDANTS, REAL ESTATE
 BOARD OF NEW ORLEANS, INC., ET AL, TO DIS-
 MISS.

Argument

Plaintiff has 10 days to submit supplemental
 memoranda, with unreported cases, etc. Defendant has
 10 days thereafter to respond.

SUBMITTED.

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: June 10, 1976

MOTION FOR EXTENSION OF TIME

Plaintiffs herein respectfully request an extension of
 time in which to file a supplemental memorandum in
 opposition to defendants' motion to dismiss based on
 the following:

1. On June 2, 1976, this Court heard oral argument
 on defendants' motion to dismiss for lack of subject
 matter jurisdiction.

2. At the conclusion of the argument, plaintiff was given ten days in which to file supplemental memorandum.

3. Plaintiffs' counsel has obtained copies of three orders in private antitrust cases brought pursuant to Section 1 of the Sherman Act against real estate boards and/or realtors wherein the courts denied defendants' motion to dismiss for lack of jurisdiction. Copies of these orders are attached hereto.

4. These orders do not contain written reasons for the decision and plaintiffs' counsel has requested through the respective offices of the clerk of court that copies of the complaint, any amended complaints, and plaintiffs' memorandum in opposition to defendants' motion to dismiss in all three cases be sent to plaintiffs' counsel.

5. Since the requested pleadings should arrive on or about the same time plaintiffs' memorandum is due, i.e., June 14, 1976, plaintiffs request that the time for filing the memorandum be extended to June 18, 1976.

6. Plaintiffs' counsel has contacted Mr. Harry McCall, Jr., lead counsel for defendants, and has been authorized to state that he has no objection to an extension of time.

Respectfully submitted,
NELSON, NELSON &
LOMBARD, LTD.

A Professional Law Corporation

/s/ PATRICIA SAIK
Patricia Saik

ORDER

IT IS ORDERED that the time in which plaintiffs are to file their supplemental memorandum is hereby extended from June 14 to June 18, 1976.

Dated: June 10, 1976

/s/ EDW. J. BOYLE, SR.
UNITED STATES DISTRICT
JUDGE

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Aug. 26, 1976

Minute Entry
August 25, 1976
BOYLE, J.

A conference will be held in this case on Friday, September 3, 1976, at 3:00 P.M.

John P. Nelson, Jr., Esq.
 Ms. Patricia Saik
 Arthur L. Ballin, Esq.
 Charles F. Barbera, Esq.
 Moise W. Dennery, Esq.
 Harry McCall, Jr., Esq.
 Roy L. Price, Esq.
 Harry S. Redmon, Jr., Esq.
 Ms. Cynthia Samuel
 Leon Sarpy, Esq.
 Edward F. Wegmann, Esq.

DATE OF ENTRY: AUG. 26, 1976.

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Sept. 8, 1976

Minute Entry
 September 3, 1976
 BOYLE, J.

A conference was held this day.

Present: Ms. Patricia Saik
 For Plaintiffs

Arthur L. Ballin, Esq.
 For Real Estate Board of
 New Orleans, Inc.

Rutledge Clement, Jr., Esq.
 For Gertrude Gardner, Inc.

Edward F. Wegmann, Esq.
 For Waguespack, Pratt, Inc.

Charles F. Barbera, Esq.
 For Stan Weber and Associates, Inc.

Ms. Cynthia Samuel
 For Sandra, Inc.

Harry McCall, Jr., Esq.
 For Isabelle C. McLeod

Not Present:

Roy L. Price, Esq.
 For Jefferson Board of
 Realtors, Inc.

Moise Dennery, Esq.
 For Latter & Blum, Inc.

Mr. Ballin declared he would represent Roy L. Price, Esq., and Mr. McCall that he would represent Moise Dennery, Esq.

Under submission is defendants' motion to dismiss for lack of jurisdiction, premised upon the failure of plaintiffs to satisfy the interstate commerce requirement of the antitrust law under which their action proceeds.

The Court advised counsel that it appears plaintiffs may satisfy said jurisdictional requirement only by bringing the facts of this case within the parameters of the Supreme Court's holding in *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 95 S. Ct. 2004, 44 L. Ed. 2d 572 (1975). It is recognized, however, that further discovery is needed on the issue of *Goldfarb's* applicability *sub judice*. More specifically, such discovery should determine whether, in the first place, there is the requisite interdependence between the brokerage activity of defendants and the financing and/or insuring of real estate transactions in the New Orleans area and, secondly, whether there is a substantial involvement of interstate commerce in such real estate transactions *via* the financing and/or insurance aspects thereof.

The parties shall confer with regard to the procedure of discovery along these lines. Following such discussions, another conference will be held in this matter at 4:00 P.M. on Wednesday, October 13, 1976.

EJB

Roy L. Price, Esq.

Moise Dennery, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 17, 1976

NOTICE OF DEPOSITION

TO: (Names of Counsel Omitted)

PLEASE TAKE NOTICE that at 9:00 a.m. on the 28th day of December, 1976, at the law offices of Nelson, Nelson & Lombard, Ltd., 344 Camp Street, Suite 1100, New Orleans, Louisiana, the plaintiffs in the above entitled action will take the deposition of MR. MEAHER PATRICK TURNER whose address is Dept. of Housing & Urban Development, Deputy Director for Hous. & Mortgage Prod., 1001 Howard Ave., New Orleans, La. upon oral examination pursuant to the Federal Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed. You are invited to attend and take such part in the examination as shall be fit and proper.

DATED: December 17, 1976.

NELSON, NELSON &

LOMBARD, LTD.

A Professional Law Corporation

/s/ PATRICIA SAIK
 Patricia Saik
 John P. Nelson, Jr.

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 17, 1976

NOTICE OF DEPOSITION

TO: (Names of Counsel Omitted)

PLEASE TAKE NOTICE that at 2:00 p.m. on the 27th day of December, 1976, at the law offices of Nelson, Nelson & Lombard, Ltd., 344 Camp Street, Suite 1100, New Orleans, Louisiana, the plaintiffs in the above entitled action will take the deposition of a corporate officer of GERTRUDE GARDNER, INC. whose address is 7934 Maple Street, New Orleans, Louisiana, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed. You are invited to at-

tend and take such part in the examination as shall be fit and proper.

DATED: December 17, 1976.

NELSON, NELSON &
 LOMBARD, LTD.
 A Professional Law Corpora-
 tion

/s/ PATRICIA SAIK
 Patricia Saik
 John P. Nelson, Jr.

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 17, 1976

NOTICE OF DEPOSITION

TO: (Names of Counsel Omitted)

PLEASE TAKE NOTICE that at 2:00 p.m. on the 28th day of December, 1976, at the law offices of

Nelson, Nelson & Lombard, Ltd., 344 Camp Street, Suite 1100, New Orleans, Louisiana, the plaintiffs in the above entitled action will take the deposition of MR. JAMES MILLS whose address is Lawyers' Title Insurance Corporation, 822 Gravier Street, New Orleans, Louisiana upon oral examination pursuant to the Federal Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed. You are invited to attend and take such part in the examination as shall be fit and proper.

DATED: December 17, 1976.

NELSON, NELSON &
LOMBARD, LTD.
A Professional Law Corpora-
tion

/s/ PATRICIA SAIK
Patricia Saik
John P. Nelson, Jr.

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 17, 1976

NOTICE OF DEPOSITION

TO: (Names of Counsel Omitted)

PLEASE TAKE NOTICE that at 3:00 p.m. on the 28th day of December, 1976, at the law offices of Nelson, Nelson & Lombard, Ltd., 344 Camp Street, Suite 1100, New Orleans, Louisiana, the plaintiffs in the above entitled action will take the deposition of MR. PAUL GRIENER whose address is Vets. Administration, Loan Guaranty Div., 701 Loyola Ave., New Orleans, Louisiana upon oral examination pursuant to the Federal Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed. You are invited to attend and take such part in the examination as shall be fit and proper.

DATED: December 17, 1976.

NELSON, NELSON &
LOMBARD, LTD.
A Professional Law Corpora-
tion

/s/ PATRICIA SAIK
 Patricia Saik
 John P. Nelson, Jr.

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 17, 1976

NOTICE OF DEPOSITION

TO: (Names of Counsel Omitted)

PLEASE TAKE NOTICE that at 11:00 a.m. on the 28th day of December, 1976, at the law offices of Nelson, Nelson & Lombard, Ltd., 344 Camp Street, Suite 1100, New Orleans, Louisiana, the plaintiffs in the above entitled action will take the deposition of MR. ANGEL V. MIRANDA whose address is Dept. of HUD, Area Economist, 1001 Howard Avenue, New Orleans, Louisiana upon oral examination pursuant to the Federal Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed. You are invited to at-

tend and take such part in the examination as shall be fit and proper.

DATED: December 17, 1976.

NELSON, NELSON &
 LOMBARD, LTD.
 A Professional Law Corpora-
 tion

/s/ PATRICIA SAIK
 Patricia Saik
 John P. Nelson, Jr.

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 21, 1976

NOTICE OF DEPOSITION

TO: (Names of Counsel Omitted)

Notice is given herewith that pursuant to Rule 30(b) of the Federal Rules of Civil Procedure, the deposition of JULIAN HECKER (of CARRUTH MORTGAGE

CO.) will be taken on oral examination at the law offices of Nelson, Nelson & Lombard, Ltd., 344 Camp Street, Suite 1100, New Orleans, Louisiana, on December 30, 1976, at 11:00 a.m., and at any and all adjournments thereof.

The above named individual whose deposition is being taken is hereby notified to appear for this deposition and to bring with her:

1. Copies of all forms presently used for loan applications.
2. Any documents showing the names and addresses of all homesteads, real estate companies, brokers and realtors with whom your company is doing business or since October 31, 1971, have done business with in the past.
3. Any documents containing the names and addresses and amounts of residential real estate loans placed or applied for or sold to the following for each year from 1971 through 1975:
 - a. Finance companies;
 - b. Homesteads;
 - c. Mutual savings banks;
 - d. Insurance companies;
 - e. Other mortgage companies or brokers;
 - f. Government or quasi-governmental agencies (including for example, FHA (Federal Housing Authority), VA (Veterans Administration), FNMA (Federal National

Mortgage Association) and GNMA (Government National Mortgage Association)).

4. Financial statements or other documents showing the volume of:
 - a. Residential real estate loans carried by Carruth.
 - b. Residential real estate loans placed with others.
 - c. Residential real estate loans sold to other (including governmental agencies).
 - d. Residential real estate loans carried with title insurance.
5. Documents supporting the number, volume and percentage of total loans placed or carried with out-of-state lenders or borrowers and out-of-state sellers or purchasers of residential real property.

DATED: December 21, 1976.

NELSON, NELSON &
LOMBARD, LTD.
A Professional Law Corporation

/s/ PATRICIA SAIK
Patricia Saik
John P. Nelson, Jr.

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 21, 1976

NOTICE OF DEPOSITION

TO: (Names of Counsel Omitted)

Notice is given herewith that pursuant to Rule 30(b) of the Federal Rules of Civil Procedure, the deposition of EDMOND G. MIRANNE of Security Homestead Association will be taken on oral examination at the law offices of Nelson, Nelson & Lombard, Ltd., 344 Camp Street, Suite 1100, New Orleans, Louisiana, on Thursday, January 6, 1977 at 9:30 a.m., and at any and all adjournments thereof.

The above named individual whose deposition is being taken is hereby notified to appear for this deposition and to bring with him:

1. Copies of all forms used for loan applications.
2. All documents supporting loans guaranteed or placed with FHA and/or VA assistance, assurance, or guarantee.
3. Documents showing total volume of VA/FHA premiums paid for or on behalf of loans carried

on books of Security Homestead from October 31, 1971 to 10/31/75, by year.

4. Settlement sheets for loan closings.
5. Volume, total number and percentage of loans with title insurance.
6. Volume, total number and percentage of loans with mortgage insurance; name and addresses of insurance companies.
7. Any FNMA forms used or adapted or modified by Security Homestead.
8. Documents showing name, address of all real estate brokers, realtors, mortgage brokers, to whom a commission was paid.
9. Documents supporting volume, number of transactions, percentage of loans sold to a third party — FNMA, GNMA, insurance companies, etc.
10. Any documents such as composite computer printouts which relate to number of loans, dollar volume, and breakdown by loan type.

DATED: December 21, 1976.

NELSON, NELSON &
LOMBARD, LTD.
A Professional Law Corporation

/s/ PATRICIA SAIK
 Patricia Saik
 John P. Nelson, Jr.

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 21, 1976

NOTICE OF DEPOSITION

TO: (Names of Counsel Omitted)

Notice is hereby given that pursuant to Rule 30(b) of the Federal Rules of Civil Procedure, the deposition of STAN WEBER of Stan Weber and Associates, Inc., Realtors, will be taken on oral examination at the law offices of Nelson, Nelson & Lombard, Ltd., 344 Camp Street, Suite 1100, New Orleans, Louisiana, on the 29th day of December, 1976, at 3:30 p.m., and at any and all adjournments thereof.

The above named individual whose deposition is being taken is hereby notified to appear for this deposition and to bring with him:

1. Copies of agreements with affiliates, for relocation services, listing services for residential properties, fee splitting with out of state real estate brokers, agents, realtors, or other entities, including as "affiliates", 21st Century, Inc., Gallery of Homes, etc.
2. Documents supporting volume of transactions generated through relocation and/or affiliate services.
3. Documents describing the services provided by Stan Weber to the public.
4. Samples of documents listing the location, price, time period and other details of affiliated listings, and/or relocations, whether listed by your company or by another real estate entity.
5. Listing agreements or types of listing agreements pertaining to affiliate services.
6. Documents, and source, including computer printouts for total number of transactions, the gross dollar volume of transactions, the type and size of transactions relating to all activities of your company.
7. Any and all forms used by Stan Weber pertaining to buying, selling, financing and insuring residential real estate transactions.
8. Copies of ad formats, advertising contracts, whether in newspapers, trade journals, magazines, or like publications; and documents

supporting the cost of advertising, both interstate and intrastate, including financial statements for the years 1971, 1972, 1973, 1974 and 1975.

9. Copies of monthly telephone statements for 1975.
10. Documents showing name, address, gross dollar volume and number of transactions conducted with, by, or through any homestead, mutual savings bank, commercial bank, mortgage company, insurance company, and/or quasi or quasi-governmental agency.

DATED: December 21, 1976.

NELSON, NELSON &
LOMBARD, LTD.
A Professional Law Corpora-
tion

/s/ PATRICIA SAIK
Patricia Saik
John P. Nelson, Jr.

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 21, 1976

MOTION FOR TIME TO EXTEND DISCOVERY

NOW INTO COURT come plaintiffs, through undersigned counsel, and respectfully show the court as follows:

1. The cut-off date for discovery of information pertaining to subject matter jurisdiction is December 31, 1976.
2. Several depositions have been scheduled before December 31, 1976. However, plaintiffs have encountered difficulty in scheduling depositions for three or four additional persons before December 31, 1976. These depositions can be scheduled in early January, 1977.
3. Plaintiffs request an additional two weeks, that is, through January 13, 1977, in order to complete discovery.
4. Plaintiffs have been authorized to state that defendants do not oppose an extension of time through January 13, 1977.

Respectfully submitted,
NELSON, NELSON &
LOMBARD, LTD.
A Professional Law
Corporation

/s/ PATRICIA SAIK
Patricia Saik
John P. Nelson, Jr.

DATE OF ENTRY: Dec. 23, 1976.

ORDER

Considering the foregoing,

IT IS ORDERED that the cutoff date for discovery of matters pertaining to subject matter jurisdiction is hereby extended from December 31, 1976, to January 14, 1977.

Signed at New Orleans, Louisiana, this 22d day of December, 1976.

/s/ EDW. J. BOYLE, SR.
UNITED STATES DISTRICT
JUDGE

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 22, 1976

PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO DEFENDANTS

TO: (Names of Counsel Omitted)

The plaintiffs request that each defendant, by an officer or agent thereof, answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories. Please take notice that a copy of such answers must be served upon the undersigned within thirty (30) days after the service of these interrogatories.

Definitions

1. "Damage period" refers to the period from October 31, 1971 through October 31, 1975.
2. "Residential real property" or "homes" refers to single residence, duplex, triplex and fourplex.
3. "Identify" means that wherever in these interrogatories you are asked to "identify" a document, please designate:

- (a) Type of document, such as letter, memorandum, report, diary, expense account, etc.
- (b) Information sufficient to enable plaintiffs to recognize the document such as its date, names and addresses of originators, title of the document, number of pages, etc. Form documents may be identified by the title of a form.
- (c) The present or last known location of the document with the name and address of the possessor.

Interrogatories

1. State the total number of completed sales for residential real property by defendant for each of the following years:
 - (a) 1971
 - (b) 1972
 - (c) 1973
 - (d) 1974
 - (e) 1975
2. State the gross dollar amount of completed sales transactions by defendant for residential real property for each of the following years:
 - (a) 1971
 - (b) 1972
 - (c) 1973

- (d) 1974
 - (e) 1975
3. State for each of the following years, the number of completed real estate transactions in which you have participated as a real estate broker wherein the buyer financed the purchase with the Federal Housing Administration (FHA), Veterans Administration (VA) or other United States Government guaranteed financing:
 - (a) 1971
 - (b) 1972
 - (c) 1973
 - (d) 1974
 - (e) 1975
 4. What documents or other information did you refer to in answering the immediately preceding interrogatory.
 5. State, for each of the following years, the number of completed real estate transactions in which you have participated as a broker wherein the buyer or seller was a resident of a state other than Louisiana: (a) 1971; (b) 1972; (c) 1973; (d) 1974; (e) 1975.
 6. At any time during the damage period, state whether defendant has ever advertised in any magazine, newspaper, trade journal, television

station, radio station or other media where such advertisement is circulated to or received by people located outside the state of Louisiana.

7. If the answer to the immediately preceding interrogatory is in the affirmative, for each advertisement state:
 - (a) The name and address of the media utilized
 - (b) The date the advertisement was placed
 - (c) The exact text of the advertisement.
8. If at any time since January 1, 1971, defendant operated, participated in or subscribed to a multiple listing service, national or international relocation service, inter-city relocation service, or property location or sale service of any nature, identify:
 - (a) The multiple listing service, national or international relocation service, inter-city relocation service, photo listing service or other such service.
 - (b) The service you provide and the service which is provided to you.
 - (c) The geographical area the service or services encompass.
 - (d) Any and all conditions which must be satisfied in order to be able to use the service or services.
 - (e) Any arrangement as to the brokerage fees

or commissions charged for the sale of residential real property listed through the service.

- (f) Any arrangement as to division of the brokerage fees or commissions charged for the sale of real property listed through the service.
 - (g) The exact time period you operated the service, participated in it, or subscribed to it.
 - (h) The states or countries where your listings are offered for sale through the service; and
 - (i) The states or countries wherein you can offer listings to potential buyers through the service.
9. Identify all documents you distributed, received or have access to in connection with any multiple listing service, national or international relocation service, inter-city relocation service, photo listing service, or other such service, including but not limited to advertising materials for the service and listing catalogs.
10. State the office address (including the city and state) of each and every office of defendant wherever located.

11. Describe the entire organizational structure of each defendant, indicating by way of example, whether defendant is an affiliate or subsidiary of any other corporation, partnership or sole proprietorship and a description of the business and type of activities of each parent, affiliate or subsidiary.
12. State whether defendant will make available to plaintiffs without a motion to produce copies of all telephone bills showing all long distance calls (both intra and interstate) for every month from October 1971 to October 1975. If the answer is in the affirmative, please attach this information to your answers.
13. State whether defendant will make available to plaintiffs without a motion to produce, any and all identification books, directory, or other system containing the names and addresses of persons or companies with which a defendant realty company does business or from which it might solicit whether directly or through speculation. If the answer to this interrogatory is in the affirmative, please attach these documents to your answers.
14. State whether defendant will provide without a motion to produce copies of any brochures or other solicitations containing information about services which defendant provides and a list of the individuals and businesses to whom

such brochures were mailed during the damage period. If the answer to this interrogatory is in the affirmative, please attach these documents to your answers.

15. Give a complete description of the scope and operation of any placement or location or relocation services which defendant may provide.
16. State the names and addresses of all title insurance companies which defendant has contacted during the damage period in conjunction with any real estate-related transaction or with whom closings have been effected or who may have provided title insurance in conjunction with such closings.
17. State the names and addresses of all lending institutions, public or private:
 - (a) To which defendant has referred customers during the damage period.
 - (b) Which defendant may have contacted to attempt to secure financing for its clients during the damage period.
 - (c) Which have participated directly or indirectly during the damage period with any sale or purchase of residential real property in which defendant received a commission or brokerage fee.

The term "lending institutions" includes but are not limited to homesteads, mutual savings banks, commercial banks, insurance companies, credit unions, private individuals, Federal Housing Authority, mortgage bankers, Veterans Administration, Federal National Mortgage Association, General National Mortgage Association and the U.S. Department of Housing & Urban Development.

18. State whether defendant will provide without a motion to produce copies of any correspondence between the defendant and

- (a) The Veterans Administration
- (b) The U.S. Dept. of Housing & Urban Development
- (c) Any out-of-state lending institutions.

If the answer to subpart (a) (b) or (c) is in the affirmative, please attach copies of this correspondence to your answers.

19. For the period from October 31, 1971 through October 31, 1975, for each sale of residential real property where a commission was earned, please state:

- (a) The seller's name and address
- (b) The buyer's name and address
- (c) The closing date
- (d) Total amount paid for the property

- (e) Gross commission paid in dollars and as a percent of the sales price
 - (f) The identity of the listing and selling broker, if different
 - (g) The commission split, if any
 - (h) The fee paid to the Real Estate Board of New Orleans, the Jefferson Board of Realtors and any other real estate board
 - (i) The amount of financing for each transaction
 - (j) The name and address of the lender
 - (k) Whether title insurance was obtained and, if so, the name and address of any surety or indeminitor of the sanctity or merchantability of title.
20. Identify the documents referred to in answering the immediately preceding interrogatory.

Respectfully submitted,
NELSON, NELSON &
LOMBARD, LTD.
A Professional Law
Corporation

/s/ PATRICIA SAIK
Patricia Saik
John P. Nelson, Jr.

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344 Camp Street, Suite 1100
New Orleans, Louisiana
70130
Phone: 523-5893

(Certificate of Service Omitted)

(Mailed December 22, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 23, 1976

NOTICE OF DEPOSITION

TO: (Names of Counsel Omitted)

PLEASE TAKE NOTICE that at 2:00 p.m. on the 6th day of January, 1977, at the law offices of Nelson, Nelson & Lombard, Ltd., 344 Camp Street, Suite 1100, New Orleans, Louisiana, the plaintiffs in the above entitled action will take the deposition of MAX DERBES, JR. whose address is Real Estate Bd. of New Orleans, Inc., 826 Perdido, Nola, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to administer oaths. The oral examination will con-

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tinue from day to day until completed. You are invited to attend and take such part in the examination as shall be fit and proper.

DATED: December 23, 1976.

NELSON, NELSON &
LOMBARD, LTD.
A Professional Law
Corporation

/s/ PATRICIA SAIK
Patricia Saik
John P. Nelson, Jr.

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Dec. 28, 1976

AMENDED NOTICE OF DEPOSITIONS

TO: (Names of Counsel Omitted)

PLEASE TAKE NOTICE that the depositions of the following persons previously scheduled by plaintiffs

for the following dates and times are hereby rescheduled. The depositions to be rescheduled are:

1. Mr. Patrick Turner, Department of Housing and Urban Development, originally noticed for Tuesday, December 28, 1976, at 9:00 a.m.
2. Angel Miranda, Department of Housing and Urban Development, originally noticed for Tuesday, December 28, 1976, at 11:00 a.m.
3. Mr. James Mills, Lawyers' Title Insurance Corporation, originally noticed for Tuesday, December 28, 1976, at 2:00 p.m.
4. Mr. Paul Griener, Veterans Administration, originally noticed for Tuesday, December 28, 1976, at 3:00 p.m.
5. Mr. Alfred T. Post, Executive Vice President, Gertrude Gardner, Inc., originally noticed for Wednesday, December 29, 1976, at 2:00 p.m.
6. Mr. Stan Weber, Stan Weber & Assoc., originally noticed for Wednesday, December 29, 1976, at 3:30 p.m.
7. Mr. Julian Hecker, Carruth Mortgage Company, originally noticed for Thursday, December 30, 1976, at 11:00 a.m.
8. Mr. Max Derbes, Real Estate Board of New Orleans, originally noticed for Thursday, January 6, 1977, at 2:00 p.m.

PLEASE TAKE NOTICE that pursuant to Rule 30(b), Federal Rules of Civil Procedure, plaintiffs will take the depositions upon oral examination of the following persons listed below at the respective dates and times indicated at the law offices of Nelson, Nelson and Lombard, Ltd., 344 Camp Street, Suite 1100, New Orleans, Louisiana 70130, before a Notary Public or some other officer authorized by law to administer oaths. The oral examination shall continue from day to day until completed. You are invited to attend and take such part in the examination as shall be fit and proper.

1. Mr. Patrick Turner, Department of Housing & Urban Development, 1001 Howard Avenue, New Orleans, Louisiana, on Monday, January 3, 1977, at 9:30 a.m.
2. Mr. Angel Miranda, Department of Housing & Urban Development, 1001 Howard Avenue, New Orleans, Louisiana, on Monday, January 3, 1977, at 11:00 a.m.

The above named individuals, viz, Mr. Patrick Turner and Mr. Angel Miranda whose depositions are to be taken are hereby notified to appear for the depositions and bring with them:

- (a) Documents or records showing the volume of HUD loan guarantees for the Parishes of Jefferson and Orleans, the number of homes so insured, and any other breakdowns, compilations or other records

regarding HUD's insurance of residential real property in Orleans and Jefferson Parishes for the period from 1970 to the present.

- (b) Any documents describing the services and programs of the Department of Housing & Urban Development in connection with residential real property.
- 3. Mr. James Mills, Lawyers' Title Insurance Company, 822 Gravier Street, New Orleans, Louisiana, on Thursday, January 6, 1977, at 2:00 p.m.
- 4. Mr. Paul Griener, Veterans Administration, Loan Guaranty Division, 701 Loyola Avenue, New Orleans, Louisiana, on Tuesday, January 4, 1977, at 10:00 p.m.

The above named individual, viz, Mr. Paul Griener, whose deposition is to be taken is hereby notified to appear for this deposition and bring with him:

- (a) Documents or records showing the volume of VA loan guarantees for the Parishes of Jefferson and Orleans, the number of homes so insured, and any other breakdowns or compilations or other records regarding the VA's insurance of residential real property in Orleans and Jefferson Parishes for the period from 1946 to the present.

- (b) Any documents describing the services and programs of the Veterans Administration and the Department of Housing & Urban Development.

- 5. Mr. Alfred T. Post, Executive Vice President, Gertrude Gardner, Inc., 7934 Maple Street, New Orleans, Louisiana, on Monday, January 10, 1977, at 2:00 p.m.
- 6. Mr. Stan Weber, Stan Weber & Assoc., 3841 Veterans Boulevard, Metairie, La., on Monday, January 10, 1977, at 10:30 a.m.

The above named individuals, viz, Mr. Alfred T. Post and Mr. Stan Weber, whose depositions are to be taken, are hereby notified to appear for their depositions and bring with them:

- (a) Copies of agreements with affiliates, for relocation services, listing services for residential properties, fee splitting with out-of-state real estate brokers, agents, realtors, or other entities, including as "affiliates", 21st Century, Inc., Gallery of Homes, etc.
- (b) Documents supporting volume of transactions generated through relocation and/or affiliate services for 1971, 1972, 1973, 1974 and 1975.
- (c) Documents describing the services provided by your company to the public.

- (d) Samples of documents listing the location, price, time period and other details of affiliated listings, and/or relocations, whether listed by your company or by another real estate entity.
- (e) Listing agreements or types of listing agreements pertaining to affiliate services.
- (f) Documents, and source, including computer printouts, for total number of transactions, the gross dollar volume of transactions, the type and size of transactions relating to all activities of your company.
- (g) Any and all forms used by your company pertaining to buying, selling, financing and insuring residential real estate transactions.
- (h) Copies of ad formats, advertising contracts, whether in newspapers, trade journals, magazines, or like publications; documents supporting the cost of advertising, both interstate and intrastate, including financial statements for the years 1971, 1972, 1973, 1974, and 1975.
- (i) Copies of monthly telephone statements for 1975.
- (j) Documents showing name, address, gross dollar volume and number of transactions conducted with, by, or through any homestead, mutual savings bank, commercial bank, mortgage company, insurance

company, quasi or quasi-governmental agency.

- 7. Mr. Julian Hecker, Carruth Mortgage Company, 3601 I-10 Service Road, Metairie, Louisiana, on Friday, January 7, 1977, at 10:00 a.m.

The above named individual, viz, Mr. Julian Hecker, whose deposition is to be taken, is hereby notified to appear for his deposition and bring with him:

- (a) Copies of all forms presently used for loan applications.
- (b) Any documents showing the names and addresses of all homesteads, real estate companies, brokers and realtors with whom Carruth Mortgage is doing business or, since October 31, 1971, has done business with in the past.
- (c) Any documents containing the names and addresses and amounts of residential real estate loans placed or applied for or sold to the following each year from 1971 through 1975:
 - (1) Finance companies;
 - (2) Homesteads;
 - (3) Mutual savings banks;
 - (4) Insurance companies;
 - (5) Other mortgage companies or brokers;

- (6) Governmental or quasi-governmental agencies (including, for example, FHA (Federal Housing Authority), VA (Veterans Administration), FNMA (Federal National Mortgage Assn.) and GNMA (Government National Mortgage Assn.)).
 - (d) Financial statements or other documents showing the volume of:
 - (1) Residential real estate loans carried by Carruth.
 - (2) Residential real estate loans placed with others.
 - (3) Residential real estate loans sold to others.
 - (4) Residential real estate loans carried with title insurance.
 - (e) Documents supporting the number, volume and percentage of total loans placed or carried with out-of-state lenders or borrowers and out-of-state sellers or purchasers of residential real property.
8. Mr. Max Derbes, First Vice President, Real Estate Board of New Orleans, Inc., 826 Perdido Street, New Orleans, Louisiana, on January 13, 1977, at 2:00 p.m.

DATED: December 28, 1976.

NELSON, NELSON &
LOMBARD, LTD.
A Professional Law
Corporation

/s/ PATRICIA SAIK
Patricia Saik
John P. Nelson, Jr.

(Certificate of Service Omitted)
(Mailed December 28, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Jan. 11, 1977

OBJECTIONS TO INTERROGATORIES

Defendants, Gertrude Gardner, Inc., Latter & Blum, Inc., Waguespack Pratt, Inc., Stan Weber & Associates, Inc., Sandra, Inc. Realty, Isabelle McLeod, Realtors, Real Estate Board of New Orleans, Inc. and Jefferson Board of Realtors, Inc., object to "Plaintiffs' First Set of

Interrogatories to Defendants" served on each of them on 23 December 1976.

The grounds of this objection are that, pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendants have 30 days from service of these interrogatories, or until 22 January 1977, to file answers or objections thereto and, since the cutoff date for discovery of matters pertaining to subject matter jurisdiction is 14 January 1977, insofar as they seek information pertaining to jurisdiction these interrogatories are not timely.

Insofar as these interrogatories seek information pertaining to any aspect of this cause other than subject matter jurisdiction, further grounds of objection are that they are and will continue to be premature until disposition of defendants' motion to dismiss for want of subject matter jurisdiction.

Respectfully submitted,

Harry S. Redmon, Jr.
and
Rutledge C. Clement, Jr.
Attorneys for Gertrude
Gardner, Inc.

Moise W. Dennerly
and
Edward J. McCloskey
Attorneys for Latter &
Blum, Inc.

Edward F. Wegmann
and
Fred P. Westenberger
Attorneys for Waguespack
Pratt, Inc.

Charles F. Barbera
Attorney for Stan Weber &
Associates, Inc.

Ms. Cynthia Samuel
Attorney for Sandra, Inc.
Realty

Harry McCall, Jr., Leon Sarpy
and Gerald Wasserman
Attorneys for Isabelle
McLeod, Realtors

Arthur L. Ballin
and
Frank C. Dudenhefer
Attorneys for Real Estate
Board of New Orleans, Inc.

Roy L. Price
Attorney for Jefferson
Board of Realtors, Inc.

/s/ HARRY McCALL, JR.
Harry McCall, Jr.

(Certificate of Service Omitted)

Minute Entry
January 14, 1977
BOYLE, J.

(Number and Title Omitted)

Filed: Jan. 18, 1977

A further conference was held this day.

Present: John P. Nelson, Jr., Esq.
Ms. Patricia Saik
For Plaintiffs
Arthur L. Ballin, Esq.
For Real Estate Board of New Orleans,
Inc.
Harry S. Redmon, Jr., Esq.
For Gertrude Gardner, Inc.
Edward F. Wegmann, Esq.
For Waguespack, Pratt, Inc.
Ms. Cynthia Samuel
For Sandra, Inc.
Harry McCall, Jr., Esq.
For Isabelle C. McLeod
Moise W. Dennerly, Esq.
J. W. Vaudry, Jr., Esq.
For Latter & Blum, Inc.
Roy L. Price, Esq.
For Jefferson Board of Realtors, Inc.

Not Present:

Charles F. Barbera, Esq.
For Stan Weber and Associates, Inc.

Counsel for plaintiffs indicated they may desire additional discovery and counsel for defendants, taking the position that the delay for completion of discovery fixed and as extended by the orders of Court had expired, declared they would object thereto and had already objected to answering interrogatories propounded by plaintiffs.

At the request of plaintiffs' counsel, and without objection by the defendants, the Court allowed plaintiffs until February 18, 1977 to submit an additional memorandum in opposition to defendants' motion to dismiss. Counsel for defendants requested and were granted until March 11, 1977 to reply to plaintiffs' memorandum.

January 28, 1977

Judge Edward Boyie
United States District Judge
500 Camp Street
New Orleans, Louisiana 70130

Att'n: Mr. Jerry Meunier

Dear Mr. Meunier:

Concerning our telephone conversation of today, the Motion to Quash on behalf of Carruth Mortgage Corporation, is now moot. We have satisfied the parties with the information we were able to furnish.

Sincerely,

/s/ MOISE S. STEEG, JR.
MOISE S. STEEG, JR.

MSSjr/bg

[419] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Jan. 20, 1977

Deposition of EDMOND G. MIRANNE, taken in the office of Messrs. Miranne & Miranne, Suite 401, 219 Carondelet Street, New Orleans, Louisiana, on Thursday, January 6, 1977.

APPEARANCES: (Omitted)

* * * *

EXAMINATION BY MR. NELSON:

[4] Q Mr. Miranne, what is your present job?

A Well, I am President of Security Homestead Association.

Q And what type of business is Security Homestead?

A Savings and loan.

Q How many branch offices does Security have at the present time?

A Seven.

Q And what parishes are they located in?

A St. Bernard, Orleans, Jefferson.

Q Would you briefly tell us, are you of the opinion that Security is the largest homestead in the state, I mean volume of business?

A We are in New Orleans, and we were in the state until the merger took place in Lake Charles.

Q Mr. Miranne, in connection with this testimony, I am going to ask you some questions concerning residential homes, one, two, three or four family units, and, if possible, the answers could relate to that, to those units.

[5] Between 1971, let's say, and the end of 1976, approximately how many mortgages, the number of mortgages, did Security make for residential homes?

A For 1976, we made fifteen hundred and fifty-six, let's say over fifty-five hundred.

Q So, it would be fifty-five hundred between January of '71 —

A Well, approximately, he didn't give me a breakdown.

Q You have some notes in front of you, and those notes have referred to statistics of 1976?

A Right.

Q In 1976, of the total mortgages on residential homes, by Security Homestead, how many were FHA and federally program insured?

A Well, you had FHA, seventy-three thousand six hundred and fifty and a total of five, and VA, one, \$47,-500.00. Now, the amounts of Freddie Mac —

Q Before we get into that, of the fifteen hundred and fifty-six mortgages, how many were federal insured?

[6] A I haven't gotten the figures.

Q Do you have any statistics?

A I have statistics for 1976 here. You asked for the five years. I told them to give it to me, and I didn't get it yet.

MR. VAUDRY:

What was the figure for FHA?

THE WITNESS:

Seventy-three thousand six hundred fifty.

To give you a breakdown, in the year 1972, we closed seven hundred and twenty-four loans, twenty-two million eight hundred fifteen thousand nine hundred forty-eight, and in 1973, nine hundred forty-six loans, thirty-one million seven hundred twenty-four thousand two hundred twenty, in 1974, we closed seven hundred and ninety-eight loans for thirty million sixty-seven thousand four hundred, and in 1975, we closed a

thousand forty loans for forty-two million eight hundred fourteen thousand one hundred seventy-three, and for 1976, we closed fifteen hundred [7] fifty-six loans for a total of sixty-two million one hundred twenty-four thousand five hundred fifty-four and forty-four cents.

EXAMINATION BY MR. NELSON:

Q The number of FHA insured loans, this information is being secured for you?

A I will get it for you for the five years. The five, the seventy-three thousand six hundred fifty are FHA, and VA loans, only one, and that would be none in the last five years, except this one. We have been out of that business since about '48.

Q You have not insured any VA insured loans?

A Except this one last week that we closed.

Q Well, we are going to go on, and then, we will pick up the number of FHA loans.

A We were not in the FHA/VA market in the last five years.

(Off the record)

MR. WEGMANN:

When he speaks as to the amount of loans he made, FHA loans he made and VA loans he made, we want it on the [8] record, regardless of the facts and figures or conjectures or speculations, we want it on the record.

EXAMINATION BY MR. NELSON:

Q At this particular moment, you have instructed one of your employees to secure for you some statistics.

While we are waiting for those statistics, would you express an opinion as to how many FHA/VA loans were made by Security — insured either FHA or VA in the last five years?

A There is no sense in my saying that until I get the figures.

MR. WEGMANN:

Did you not say a few minutes ago, Mr. Miranne, that you have been out of the FHA/VA loan business since 1948, with the exception of this very nominal number of loans?

THE WITNESS:

In the last five years, we have been out of the FHA/VA market.

EXAMINATION BY MR. NELSON:

Q Mr. Miranne, during the last five years, were [9] there any type of federally insured programs at all in which Security was involved?

A No.

Q So, the sources of the monies that were borrowed were considered what you call conventional financing?

A Right.

Q Now, in connection with the funds available for mortgage loans, insured or otherwise, would you please describe what, if any funds, come in from out of the state, and during the course of a year, could you describe that?

A Well, yes, a portfolio for money comes from all the banks and federal owned banks out of Little Rock.

Q What happens to the notes that various borrowers sign with Security, let's say in the last five years, what does Security do with the notes on the types of mortgages we are talking about, on residential property?

A We close them and maintain all of the notes in the vaults, this being a bank building.

[10] Q Are any of the notes ever put up for security for any money that comes out of the state?

A Only if we sell the paper. We do sell paper for the Freddie Mac.

Q What is Freddie Mac?

A A federal home loan mortgage corporation that buys paper from us.

Q That started when?

A In the last year, the Federal Home Loan Mortgage Corporation out of Little Rock, for the purpose of purchasing papers or notes for savings and loans in order to make you fund money for more loans.

Q Actually, with Freddie Mac transactions, how is it done?

A We close the loan like we do, and we bundle up the notes and all of the papers and anything else and

put them together, and we send them up to Freddie Mac, and Freddie Mac goes over them, and if they comply with the regulations, in so far as they bind their paper, they send up a check.

[11] Q How often is this done?

A I dare say, we have only done it within the last year, only four times. We sold off four million forty-five thousand three hundred and fifty-six dollars in secondary market notes that we sold off.

Q In what year?

A Last year.

Q 1976?

A Part of '76 and '75.

Q Does Security deal with any outside of state financing institutions outside of the state of Louisiana or only Little Rock?

A The only one, other than Little Rock, we are trying to culminate a deal to sell paper in Baltimore. We have to put all the details together right now. This is a savings and loan in Baltimore, Maryland.

Q Prior to January 1976, between '71 and '75, the end of '75, was Security borrowing money from any institutions outside of the state of Louisiana?

A No, other than the Federal Home Loan Bank, which is our mother bank.

[12] Q Do you have available the amount of money that was borrowed from that home loan bank for 1972, '73, '74 and '75?

A I will have to get it.

Q You say in '76, it was only approximately four million that came in from —

A The amount of loans sent to the secondary market was four million —

Q So, the rest of the money that went through the company in 1976, I assume, came from local banks?

A Yes, and the Federal Home Loan Bank.

Q Located where?

A Little Rock, Arkansas.

Q How much money from the Federal Home Loan Bank from 1972 through 1976?

A I will have to get you the figures. It varies. As you know, we borrow, pay them off and borrow again. At the end of a year, we could give you a statement from the end of the year. We are in, and we are out. We borrow and we pay them off.

Q Would it be possible for you to give me a percentage of the number of notes [13] represented by the number of mortgages, the number of mortgages that you testified to, how many of these notes are used to secure money received from the banks outside of the state of Louisiana?

A Only one bank, the Federal Home Loan Bank, no others.

Q Is this information available?

A Well, I'm going to try to get what I borrowed, the money. We are getting beyond the scope with all these questions, but go ahead, but I have it marked down here.

Q Have you ever done business with Fannie Mae?

A Sure.

Q On residential homes?

A Yes, residential.

Q When?

A I would have to get you the answer there. In the last five years, it is only been this year that we have done business with Fannie Mae. I will have to check that out.

Q When you do business with Fannie Mae, what is the procedure that you go through, [14] what happens?

A It will be the same procedure as when you do business with the Federal Home Loan Bank. In other words, you sell your notes, and well, you bundle up your notes and meet the requirements of Fannie Mae and send them a package up. We are just getting into Fannie Mae. I don't know if I can find that answer out.

Q What about Gennie Mae?

A G.M.A. — I don't think we are in that at all.

Q What about insurance companies in the last five years?

A None at all.

Q Any other type of mortgage brokers?

A No.

Q No other companies?

A No.

Q Now, other than the Federal Home Loan Bank, you say there is no other transfer of funds that comes to this company from outside of the state?

A No, unless it be investments by other savings [15] and loans, sometimes, but usually, that is within the state savings and loans invested with you, certificates of deposit and things like that, you know.

Q Are there any investments in any companies at all with your company from companies that are domiciled outside of the state of Louisiana?

A I wouldn't know that answer. We have thirty-six thousand five hundred accounts. I imagine there are many companies that have investments with us throughout, outside of the state. Whether they are lending institutions, I don't know. We keep no tally that way. We just throw them in as number of accounts. It is just a plain savings account. They deposit so many dollars with us, and we pay them a dividend.

Q If you were to find out how many companies outside of the state of Louisiana have investments in your business — you could find that out?

A I guess, if you gave me about sixty days I [16] might be able to.

Q What records would you go to?

A I would have to go through everyone of the thirty-six thousand accounts in order to find that out.

Q Do these various companies receive any type of communication at all during the course of a year from your company?

A Yes, they would be stockholders in the company. It is owned by the people.

Q You would have a list of addresses?

A Yes, for savings accounts.

Q If we would go through a list of addresses, we would get some idea of how many outside accounts Security has?

A If we went through every one, yes.

Q Mr. Miranne, do you have anyone in your company specifically assigned to take care of federal programs?

A Only the Freddie Mac program; secondary market.

Q Is this employee, is this employee specifically assigned that job?

A He is assigned to that and everything. That is one of his assignments.

[17] Q How many people do you have working on that?

A Actually, in our operation, everybody works on everything, including myself. In other words, no matter what program it may be, but he is in charge of that with Mr. Faia. Mr. Faia would be our man, but he handles all commercial loans, as far as this department goes. He has other duties. It is not just a specific job.

(Off the record)

THE WITNESS:

Let me see — in the FHA loans, all in the last —

EXAMINATION BY MR. NELSON:

Q Wait a minute, Mr. Miranne. You have now in your possession some statistics, correct, in connection with how many loans are secured from federally funded programs?

A Well, I have the total statistics here. What I am trying to say is that you interrupted me, and what I am saying now, in the last five years, we have made no FHA loans in the last five years. [18] We have made one VA loan. We have been in the Freddie Mac for approximately two and one-half years. We started into the FHA loans at the beginning of this year. We have five, and like I said, one VA.

Q You said you started in FHA loans beginning in this year, '77?

A '76. In other words, we were out of it up until that time, and about the beginning of this year, we started and did some FHA loans.

Q What date are you talking about?

A January 1976.

Q How many FHA approved loans did you make during the year?

A Five.

Q What about Freddie Mac, how many loans?

A A hundred and fifteen.

Q Actually, how does the Freddie Mac procedure work?

A All we do is make a loan, and after we make the loan, we follow the guidelines and put the package together, everything they want in there, and we file it and [19] send it to them, and they go over the appraisal and go over the surveys and descriptions and notes, and if everything meets what they require, they buy the paper from us.

Q Do you have in your statistics the money volume of the business with Freddie Mac?

A Yes, it is four million forty-five thousand three hundred fifty-six dollars and seventy-four cents.

Q Would your statistics, do you have any reference there to the Federal Home Loan Bank?

A Well, yes, that is a subsidiary of the Home Loan Bank. In other words, the Freddie Mac, the secondary market is a subsidiary of the Federal Home Loan Bank. It is run by them. It is one of their subsidiaries that was put together to buy paper.

Q Other than the four million, we are talking about no other money that came to this company outside of the state of Louisiana in 1976?

[20] A Other than the Federal Home Loan Bank.

Q How much money was borrowed through them?

A I am going to have that figure.

Q In 1972, '73, and '74 and '75, and we can assume that this company did not have any mortgages insured by FHA, is that correct?

A Only five.

Q And those five were in '76?

A '76, end of '75.

Q And the total number of loans that were in, in which the Federal Home Loan Bank is concerned, that information is on its way, is that correct?

A Right. In other words, what I am going to give you is how much money did we borrow at the end of '72, '73, '74 and '75. It overlaps. It goes up and down all during the year. So, consequently, I will give you the figures at the end of '72, '73, '74 and '75, what we borrowed at the end of the year.

Q As far as out of the state investors are concerned, do you have an opinion as to [21] the percentage, number wise volume, the amount?

A No opinion, no sir.

Q Do your records, do you have written records for any type of recorded memoranda that would show how many customers come to you for residential loans without the services of a real estate broker or a realtor?

MR. WEGMANN:

Object to the form of the question.

MR. NELSON:

You can answer it.

THE WITNESS:

So I understand the question, you are asking me how many actual loans come to me?

EXAMINATION BY MR. NELSON:

Q No, sir. My question is, do you keep any written records or any recorded memoranda showing the number of customers that come to Security seeking loans who do not have the service of a real estate broker or realtor?

A No, we do not, and the reason being, when [22] they bring a loan to us, unless it was a friend that recommended us or something like that, that they have called us, we have no need to keep that, because we do not underwrite our loans on what the real estate agent does. It is of no importance to us what the real estate agent thinks.

Q How long have you been connected with Security Homestead?

A Since I was twelve years old, and I am fifty-six.

Q When did you graduate from law school?

A '48.

Q Following that, you began working for Security as a closing attorney?

A I started licking envelopes and dividend checks when I was twelve, and when I was at Jesuit High, I worked after school, while I was in Loyola, I worked and did a little bit of everything. Then, I came back full time in '48.

Q As far as your experience is concerned, what has been your experience in [23] connection with realty companies, real estate brokers calling Security or coming to see Security about loans for prospective customers for themselves?

MR. WEGMANN:

Again, object to the form of the question.

THE WITNESS:

Well, actually, when they have a loan, they all call. They all solicit rates. On every sale that comes in, the agent makes their commission when the loan is approved, according to the real estate agreement. Consequently, you do get a lot of calls quoting rates. They shop or whatever. This is a daily practice that means nothing to us. Our loans are based entirely upon the credit of the person, the appraisal of the property, and, of course, their credit report that comes in to us, we underwrite ourselves.

EXAMINATION BY MR. NELSON:

Q It has been your experience that real estate brokers and representatives of the real [24] estate companies do call your company to solicit rates?

A Everybody calls. There are fifty calls a day asking what is your rate. Everybody calls.

Q What are they talking about when they ask you what is your rate?

A You get calls from a lot of savings and loans, checking our rates out to be competitive. We might call other savings and loan institutions to see what their rates are to be competitive. We get calls everyday to quote today's rate.

Q What is today's rate?

A For residential, eight and three-quarters and eight and a half and one point. It depends on how we read the file and if the compensating balances are with us. If a guy has money with us, we give him a better rate. If he keeps it on six and a half, we balance off ratio wise. We might give him better than eight and three-quarters, if he has \$60,000.00. It is just based on how [25] that file is going to read, and what that man wants to do.

From our experience, to eyeball a customer, we don't do anything that we can't eyeball a customer. When you are extending credit, you want to talk to a guy and see how he shapes up, what he does.

Q On occasions, when you eyeball a customer, so to speak, as you described it, is the real estate agent with him?

A No, they are a good taxi cab to bring him down, get him and bring him in there and talk with us. Some sit there, and some don't. You prefer them not to sit there, because, frankly, making a loan is none of their business, the real estate agent. I don't mean that to be

derogatory. It is not the agent's job. We do the underwriting and make the loans and approve the loans, not the agents. I say this, many times, but some of them sit there, but very few. They will go and sit in the waiting room while we talk, because you [26] do talk over private things. It is none of their business what your own personal financial statement is. That is how we do it.

Q Mr. Miranne, you were asked if you could bring a copy of the forms used for loan applications and the form used for the closing, and do you have those?

A Yes. (Indicating)

Q I have just been presented two forms which satisfy the subpoena, and I will mark them for identification as Miranne-1 and Miranne-2. Miranne-1 is the application and the residential loan application, and Miranne-2 is the bill of sale.

MR. WEGMANN:

Could I see those?

This document may be entitled bill of sale, but it certainly is not a bill of sale or act of sale form.

THE WITNESS:

No, that is just a closing statement that they asked for.

MR. WEGMANN:

[27] Would you distinguish that, please?

THE WITNESS:

On Exhibit B or 2, this is a bill of sale which we use in order to show the closing cost, the purchase price, credits and loan from the association.

Now, when you say bill of sale, we don't call them that here, it is, of course, an act of sale. This is just a bill of sale of the closing cost. The other exhibit is a residential loan application, and we use this in all commercial and everything.

EXAMINATION BY MR. NELSON:

Q Mr. Miranne, in connection with the Miranne No. 2, the bill of sale, how long has this form been used by Security?

A Twenty-five years.

Q The items listed on the left hand side, they have been on this sheet for twenty-five years?

A We have a couple of things — but — yes.

MR. WEGMANN:

We are all attorneys, and we know that is not a bill of sale. It might [28] be entitled that, but as the witness just testified, that is nothing but a document evidencing the things involved. I want to keep the record straight.

MR. NELSON:

That is agreeable. I will refer to it as Miranne No. 2.

EXAMINATION BY MR. NELSON:

Q In connection with Miranne No. 2, is there a line, an item, called agent's commission, and is that actually the agent's commission?

A The amount of money, earnest money, posted by the purchaser to make the transaction final, in so far as the agreement to purchase is concerned.

Q The agent referred to is real estate agent?

A Yes.

Q And whatever agreement he has with his principal?

A Right, because you have to have that on the form, because that is maintained by the agent in a non-interest bearing account, and when we go to the sale, they have to come in and account for the [29] money they were holding.

Q On the real estate agent, does he appear at the act of sale?

A They are holding the commission, yes.

Q Is it not a fact that the agent's commission is usually contracted for in terms of a percentage?

A Oh, yes, according to the real estate agreement.

Q As part of the duty of closing these acts and dispersing money, it is part of the responsibility of the man closing the act to be sure that the correct amount for the agent's commission is handled, is that correct?

A Correct.

Q Has it been your experience that the agent's commission is not due until after the loan is nailed down and closed?

MR. WEGMANN:

Object again to the form of the question.

M.R. VAUDRY:

Unless you are talking about a specific transaction, as calling for [30] speculation of the witness.

THE WITNESS:

Well, according to agreements that I have seen, it usually stipulates that the agent's commission is earned upon the acquisition of the loan, the approval of the loan. That is what I read.

(Off the record)

EXAMINATION BY MR. NELSON:

Q Some additional figures were brought in to you, and would you tell us what they are for?

A With regard to money borrowed from the Federal Home Loan Bank, at the end of each year, from 1972 to 1976. At the end of 1972, we had two million borrowed. At the end of 1973, we had four and a half million borrowed. At the end of 1974, we had twelve million two hundred and forty thousand borrowed. At the end of 1975, we had fifteen million twenty-nine thousand five hundred borrowed. At the end of 1976, we have twenty million seven hundred [31] and twenty-nine thousand five hundred.

Now, let me add, those rates within the year do fluctuate. In other words, we pay them down, and we

borrow again, and we pay them down, and we borrow again. Those are the figures at the end of the year of the borrowed money we had with the Federal Home Loan Bank in Little Rock.

Q Approximately how many times a year would you say on an average from '72 to '76 would the borrowing be made?

A Four or five times a year. I would say at the dividend period.

Q Sometime during the year it would go up and drop?

A I would say the figures I gave you for '76 was the highest it has been. It may drop down, but that is the highest.

(Off the record)

THE WITNESS:

Well, I think you asked me a question about the number of notes pledged?

MR. NELSON:

[32] Right.

THE WITNESS:

Against the advances from the Federal Home Loan Bank?

MR. NELSON:

Right.

THE WITNESS:

In 1972, we pledged three hundred and twenty-two notes for six million nine hundred thirty-six thousand two hundred fifteen dollars. In 1973, we pledged three hundred ninety-one notes for a total of nine million one hundred thirty-seven thousand four hundred eighty-five. In 1974, we pledged eight hundred ninety-nine notes for a total of twenty-two million six hundred forty-five thousand three hundred ninety-five dollars. In 1975, we got pledged nine hundred twenty-five notes for twenty-three thousand eight o one five twenty.

MR. NELSON:

Twenty-three thousand?

THE WITNESS:

[33] Twenty-three million, I beg your pardon. In 1976, a thousand and forty-seven notes for a total sum of twenty-seven million four hundred eighty-four thousand one hundred twenty-one dollars.

MR. NELSON:

Thank you, Mr. Miranne.

EXAMINATION BY MR. NELSON:

Q Mr. Miranne, does the Security Homestead belong to any federal organizations?

A We belong to the National Savings and Loan League and the U.S., both.

Q Do they have a yearly convention?

A Yes, they do.

Q Both organizations?

A Yes, both organizations have conventions.

Q To your knowledge, on the national level, is there any joint effort made to hold conventions together or joint meetings between the National Savings and Loan League or the National Savings and Loan League of the U.S.?

A No. There are two National Savings and Loan Leagues. One is the United States [34] Savings and Loan League, and the other answer to that is no.

Q Do any of the organizations meet with representatives of organizations of realty companies?

A I would say no. They are just trade associations for the trade, savings and loans.

Q Are there any associations that operate locally, associations of homesteads?

A Yes, the New Orleans Savings and Loan League.

Q Any others?

A That is the only one. We have the state league, of course.

Q Do you know who is the president of the New Orleans Savings and Loan League?

A I can get it for you. I would be guessing —

Q Are there any state organizations?

A Yes, the Louisiana Savings and Loan League.

Q Does the New Orleans Savings and Loan League meet during the year?

A Every Thursday.

Q Where?

A At the International House.

Q Are there any representatives of real estate [35] companies or realtors present at any of those meetings?

A Other than to make a talk, but they are not invited to join.

Q There have been occasions that they may talk on some subject?

A To make a talk, but they are not associate members.

Q To your knowledge, has any representative of the New Orleans Savings and Loan League appeared before realty company organizations to give talks?

A I would imagine yes. All of us have, at one time.

Q These talks generally deal with what?

A Well, it is on loan procedures, the market, the way it is today, the prognosis as to the future, what money is going to do, what do we find the next year — already — we are asking that question — what is the position of the savings and loan in so far as the future market is concerned. It is like a general information deal that they do do, yes.

MR. NELSON:

[36] Thank you, Mr. Miranne. Maybe some of these other gentlemen might have some questions.

EXAMINATION BY MR. WEGMANN:

Q Mr. Miranne, what role does the real estate agent play in obtaining a loan?

A No role whatsoever, other than merely to bring the person down here. You mean to refer him to

Security as a possible source of obtaining the loan he is seeking to obtain?

Q That is correct.

A They usually bring them down, and in many instances, they do not bring them down. We basically do not need the realtor at all to bring him down, and basically, we would prefer just to talk directly to the borrower, because it is what the borrower says and what his track record is and credit position and what his earnings are and investments are, that is what we go on for the basis of the loan, plus the appraisal of the property. And, the agent may not like me to say this, but they play no part other than [37] to get them to us. In our business, Security Homestead, I would say that sixty to seventy per cent of our business is referral by services we have rendered. Frankly speaking, in this town, the rates are all the same around the corner. One quotes this, and they all quote it. If you cut an eighth of a point, everything moves. It is just that you have to sell your savings and loan today, basically on how you service the people and how you treat them. It has been good for us. I am not bragging, but we service them nice, and they may refer their children, their brother or whatever to us. I venture to say that sixty to seventy per cent are referrals by loans we have made to people.

Q What role if any does the real estate agent play in the homestead granting or not granting the loan?

A They would play no part at all. In fact, it has always been my feeling and my policy, when I underwrite a loan, as a member of the committee, I underwrite [38] it basically on what the potential borrower

has to present to us. I would say they play no role other than a person to get them to us and sit them down, and that is about it.

Q How many homesteads are there in this city?

A Thirty-eight, my last count.

EXAMINATION BY MR. VAUDRY:

Q Mr. Miranne, you indicated that in some instances, a broker brings prospective borrowers to the homestead, and I think at one time you said that was just a taxi cab service?

A I didn't mean to be facetious. They get them to us, and once they get them to us, that is as far as they go, as far as Security Homestead is concerned.

Q Would you know in the instances you were referring to whether these are cases where Security Homestead, as such, has been referred to the buyer by the broker or when the buyer has simply chosen Security Homestead as the place that he wanted?

A I would say sixty to seventy per cent, the [39] borrower has selected Security.

Q Could you tell us, and I hope I am not asking you for some figures that you don't have, but could you tell us the number of volume or amount of deposits from, you call them investors, that Security had at the end of each of the years, '71 through '76?

A I could get you that. I can give you basically what we have right now, as of the end of —

Q I am talking about dollars.

A We have thirty-six thousand five hundred and

twenty-seven savings accounts, for a total of a hundred and seventy million four hundred eighty-three thousand five hundred sixty-one dollars and ninety-seven cents.

Q In terms of annual statements, it appears on —

A I can get you that answer. It is no problem to get that. That is what we were this year. We just finished, in fact, today.

Q I would like to have that on the record.

A I will get that for you.

[40] MR. WEGMANN:

For those years in question?

MR. VAUDRY:

'71 through '76.

MR. WEGMANN:

A copy of the annual statements, and I would like to make it as part of the record the annual statements of the Security Homestead Association and mark the same Defendants-1, 2, 3, 4 and 5 and have them attached to the deposition.

EXAMINATION BY MR. VAUDRY:

Q Would it be a fair statement to say that in your opinion, a realtor's services are not essential to the making of a loan through Security Homestead?

A It would be a fair statement to make that, yes, because we make loans to anyone regardless of race,

color or creed, if they qualify under the guidelines which we have.

Q Now, you indicate that from time to time a certain number of loans are packaged up and sold to what you referred to as [41] Freddie Mac?

A Yes.

Q Your answer to that question is yes?

A Yes.

Q In those instances, those loans that are packaged up and sold are all complete real estate transactions?

A Yes.

Q Everything that has to do with closing the loan and conveying the real estate to the buyer has been completed?

A Everything has been completed. It is a finished loan registered record.

(Off the record)

THE WITNESS:

The president of the New Orleans Savings and Loan League is John Marque. That is the New Orleans Savings and Loan League.

EXAMINATION BY MR. VAUDRY:

Q As I understand it, the figures that you gave for VA and FHA loans were, the small amounts were, in fact, in error, because some were miscoded?

A No, let's see, our figures that we have in [42] FHA loans are five, seventy-three thousand six hun-

dred and fifty — I didn't read that — we only have three FHA loans on our books and two were miscoded. They were made in 1954 and 1955. The amount closed in 1954 was nineteen thousand for one loan, and the amount closed in 1955 was thirty-seven thousand eight hundred and seventy-five for two loans. The present balance of FHA loans on our books, at this time, is twenty-one thousand nine hundred sixty-seven dollars and forty-four cents.

Q When you say FHA loans, and you refer to one VA loan, this is the amount of the loans as it stands with respect to Security Homestead, is that correct?

A Correct.

Q It isn't the portion of the loan that may be guaranteed by VA or FHA?

A No, in other words, they guaranteed it up to seventeen five, and we lended all the money. They gave the guarantee.

Q The amount of guarantee is something less [43] than a small —

A I think not, the VA loan was forty-seven thousand five hundred, and there is one loan guaranteed under that, and that would be seventeen thousand five hundred.

Q Does the homestead, Security Homestead, Mr. Miranne, require any researching or checking of titles to the property that secure the loans that are made, the real estate loans?

A Yes, we do.

Q And in what fashion is this obtained?

A What usually happens is in every case that we get, we usually take and research the title back, usually

fifty-two years, except if we go into a chain that we have done before, and we just usually stop, because that has been done already. In every case, we examine the titles to the property, and in every case, our loans are approved based on merchantable titles based on surveys that have been obtained to show that the property lies within the proper building lines, with no [44] violations of any restrictions or regulations or ordinances, et cetera. After that report is made, it forms a part of the loan file.

Q Is it your testimony that in every case, that Security bases the making of the loan upon a title examination by a local attorney?

A Right.

Q Is that a transaction which, in any instance, requires any title insurance?

A In some instances, with Freddie Mac, in meetings with Freddie Mac, Freddie Mac had agreed to take your title opinion of the savings and loan, then, as time goes on, we do — I am not an attorney anymore, just the president, but the legal firm does have a security title of Baltimore, and an agency for security titles of Baltimore, and when we originally write it, we write it only on opinion of the attorney. If we sell the paper, we supplement that with a title insurance, mortgage insurance only.

[45] Q How long has this been?

A Two and a half years.

Q With respect to the examination of the title, does the realtor who may be involved in one of the real estate transactions, play any role with respect to that?

A No, he does not.

Q Now, you indicated before that you estimate, I believe, some seventy per cent of the business that came to Security in so far as loan applications, borrower loan applications, came from how would you describe it, in family referral type situations?

A In house referrals. I mean borrowers on our books now. Sixty to seventy per cent is my estimate.

Q You don't have any figures or statistics?

A No, we don't keep it. All I can say, this is my opinion, based on seeing every loan that comes through this company, and based on knowing the general part of everything that goes through this company, and based on the personal attention that we give, this is my [46] opinion.

Q Now, with respect to the other thirty per cent of whatever it is, thirty or forty per cent, would you have any data that would indicate the part of that percentage that may come to Security through a referral from a real estate broker?

A No, no, we don't keep that. In other words, we don't follow it up. All it is is a feeling that I have for this business. I see the people and the names and the people that call me personally in this business. In our company itself, it kind of starts at the top and goes down to the bottom. That is a little different from other companies that start at the bottom and go to the top. In our company, we try to maintain a personal touch with everybody, because service is the only thing that can bring it to us, because the rates around the next corner and the next door are all the same.

MR. WEGMANN:

[47] In connection with the testimony of this witness, we would like to mark these statements. These are statements for the period ending December 31st, 1972, and I would like to mark this one Defendant-1, and for the period ending June 30th, 1972, we will mark it Defendant-2, and for the period ending December 31st, 1971, we will mark it Defendant-3, and for the period ending June 30th, 1971, we will mark it Defendant-4, and for the period ending December 31st, 1970, we will mark it Defendant-5, and for the period ending June 30th, 1970, we will mark it Defendant-6.

The annual report of 1974, we will mark it Defendant-7. For the period ending 1975, we will mark it Defendant-7, and for the period ending 1973, we will mark it Defendant-8, and ask that they be exhibits to the witness's deposition.

EXAMINATION BY MR. NELSON:

Q Mr. Miranne, in connection with these loans [48] on residential property that you have testified to, can you give us an expression of your opinion as to the percentages of loans during the period '71 through '76 that were made without the payment of an agent's commission?

A No, sir.

Q Now, in order, if I wanted to secure that information, I would have to look through each one of the closing statements, is that correct?

A That is correct.

Q Now, isn't it a fact that these people that are referred up here, regardless of what reason they come, they are the ones that usually come up to make a loan, and they are not usually the owners of the property?

A Not the owner, the purchaser.

Q The real estate commissions due to the real estate companies are usually paid by the owner?

A Correct.

Q The people that come up to see you are not really responsible for the real estate [49] commissions?

A No, they are not responsible.

Q Isn't it a fact, when you start accumulating information for the purpose of checking titles or whatever, you have, at some point, to contact the owner or his representative?

A No, we usually make a requirement, when they sit down to make a loan, that we be furnished a title by the owner.

Q The agent may bring it to you?

A Yes.

Q It is simply a practical matter that usually the real estate agents furnish this company with information like the title to the property or whatever information?

A In many instances.

Q If you want title to properties, you would call the agent and not the owner?

A We don't usually call. When they sit down to make a loan, we require that they bring us back a title. We would say, Mr. Nelson, we need the title to the property. Usually, when they come in to make a loan, actually, they have the [50] title already, because the

agent knows they have to have the real estate agreement and title. If they don't have it, we require they bring it back to us.

Q Isn't it a fact that you are also interested in knowing how much down payment they have already made?

A Yes, that is taken from the real estate agreement.

Q In the vast majority of cases, in excess of ninety per cent of the cases, in which people come up here, no matter who refers them, this company has to confer with a real estate agent?

MR. WEGMANN:

Object to the form of the question.

MR. VAUDRY:

You are saying ninety per cent of the cases?

MR. NELSON:

I am talking about the vast majority of cases.

MR. WEGMANN:

You are testifying instead of [51] interrogating the witness. I will ask you to rephrase it.

(Off the record)

MR. WEGMANN:

You are testifying instead of interrogating the witness.

EXAMINATION BY MR. NELSON:

Q Do you understand that as a question?
Tell me and I will reword it.

A I can answer the question. As a lawyer, I understand what is happening here. Number one, in many instances, we do contact the agent for something during the course or the agent contacts us. There is a rapport, in other words, with the agent, whether it is ninety, eighty, seventy, I do not know.

Q But, as a practical matter, in this city, the real estate agent does play a part in the ultimate closing of the loan?

MR. VAUDRY:

Object to the form of the question.

MR. WEGMANN:

Again, I state for the record, Counsel, you are testifying instead of [52] interrogating the witness.

MR. VAUDRY:

My objection is you are calling for an opinion of the witness.

MR. NELSON:

Are you saying he is not qualified to give opinions in this area?

MR. VAUDRY:

I don't think the witness is being interrogated as an expert witness.

MR. NELSON:

I have been under a misapprehension. I thought that is why we were deposing him.

(Off the record)

EXAMINATION BY MR. NELSON:

Q Mr. Miranne, is that not true?

A The real estate agent does play a part in the ultimate closing, but plays no part in the underwriting of the lending. They may get a title for you. They may do this, and get the title for you, and they may pick up some papers and bring it to you, but they play no part as far as the underwriting of the loan [52] by the association.

Q Now, the investors, you were asked about the number of investors, and you said thirty-six thousand five hundred twenty-seven actually are investors, and is it the same as stockholders? How would you define it?

A An investor is a stockholder, because we are a mutual, and the investors are the owners of the homestead.

Q Have these people made loans through here?

A No, as far as an investor, you are talking about a person who has put money in the savings and loan, and he is entitled to a vote each year, in January. The investors are actually the owners of the company. They have invested the money that you lend. The State Law calls them stockholders. If they have \$100.00 with us,

they have one share of stock. That is just our State Law, as that phase of mutuality. That is why they get it.

Q Would you give us, Mr. Miranne, an idea of the federal regulations that control [54] Security Homestead, a general idea?

A Well, in Louisiana, there is a dual system. We are a State chartered institution, and in my opinion, and in the opinion of many, many attorneys throughout the country, state chartered institutions are only accountable to the Federal Home Loan Bank, in order to get the insurance of shares from the FSLIC. This is for states. Mr. Kenneth Pickering, he is the man that controls the operation of the savings and loans and banks in this state. The only reason we have to comply with the FSLIC, Federal Savings and Loan Insurance Corporation, is because of our insurance of shares.

Now, the federal savings and loans in this area are strictly under the complete jurisdiction of the Federal Home Loan Bank and the Federal Home Loan Bank system.

Q In connection with the operation of Security, is Security audited yearly by any agency of the Federal Government?

[55] A Yes, every fourteen months by the Federal Home Loan Bank.

Q Do you have to pay a fee?

A Yes.

Q To whom?

A The Federal Home Loan Bank, Ninth District, Little Rock.

Q In connection with the financial statements we have presented, marked for identification previously,

in so far as the assets are concerned, the U.S. Government and other investment securities in the amount of nine million eight hundred fifty-three thousand nine hundred twenty-four, and briefly, what does that represent?

A The liquidity which we must maintain under the FSLIC rates. That is what you call liquidity, which is convertible into money within twenty-four hours, and at the amount of that is seven per cent to share capital.

Q Where is that held?

A We have it in bonds, and I think the First N.B.C., in the vault.

[56] Q The United States and other investment securities that means United States bonds?

A Yes, they maintain that we have to maintain seven per cent of our share capital, that is, invested money, with us in order to pay off in case of withdrawal of money.

Q That is a federal regulation?

A Right.

Q Now, stock in Federal Home Loan Bank, what does that represent?

A In other words, in order to be a member of the Federal Home Loan Bank, in order to borrow, they have systems, one is the FLIC, federal insurance on our shares, and the other is the Federal Home Loan Bank, like a subsidiary of the Federal Home Loan Bank. In order to borrow money, we have to be a member, and every time you borrow, you pledge notes. If you borrow a million, you have to pledge notes, and they make requirements that you buy more stock. You have

to be a member of the [57] Federal Home Loan Bank in order to borrow money. As you borrow more money, you have to buy stock.

Q The FSLIC pre-paid premiums —

A That is the counterpart of the FDIC, Federal Savings and Loan Insurance Corporation, and that is the corporation which is a subsidiary to insure our shares up to \$40,000.00 for each account.

Q You testified —

A Excuse me, just a minute, you asked a question about the premium you pay, and that is what we pay to get the insurance. That is what we are talking about.

Q You testified earlier that the notes used as security or notes that form a part of the complete real estate transaction, do you remember?

A This is the notes used for borrowing. That is the completed —

Q That money that is borrowed is used to lend for other real estate transactions?

A That is right, or to take care of commitments that we have. If you borrow from the [58] Federal Home Loan Bank, you have to say, if you borrow for a commitment or for making future home loans.

Q It is a cycle?

A That is right, just like the local banks or the FDIC. We are with the Federal Home Loan Bank.

Q Now, you mentioned a number of associations, organizations that Security Homestead Association is a member of, and in the back of this yearly report, it lists the Federal Home Loan Bank of Little Rock, the Federal Savings and Loan Insurance Corporation, and

where is the Federal Savings and Loan Insurance Corporation domiciled?

A Washington.

Q D.C.?

A Yes.

Q What about the National League of Insured Savings Association and the United States Savings and Loan League?

A D.C. and Chicago.

Q The American Savings and Loan Institute, do you know where that is domiciled?

[59] A I imagine in D.C. That is an institute used to train people in different phases of the operation of savings and loan.

Q And the Controllers Society for Savings Institutions?

A Only controllers belong to that. That is not a government function at all.

Q I notice Security is a member of the Home Builders Association of Greater New Orleans, Inc.

A An associate member.

Q Do you pay dues?

A Yes.

Q Do you have a vote in the organization?

A I don't believe we do.

Q Do you attend meetings?

A We send somebody. We actually attend the functions that they have to create business.

Q To your knowledge, are relators also members of this same organization?

A I do not know definitely. There may be a pro-

vision that they can be an associate member. I don't know that.

[60] Q At any of their organizational meetings, have you ever come across representatives of realtors?

A I have never been.

Q How often do they meet?

A They have different functions that they have, maybe three times a year. It will say that they may get together and have a talk by someone.

Q And the Savings Institutions Marketing Society of America?

A We have a Marketing Department, which I have a director for, Mr. Bourgeois, and that is a private deal, that is not federal.

MR. NELSON:

Thank you very much.

CONSOLIDATED FINANCIAL STATEMENT of the

SECURITY HOMESTEAD ASSOCIATION

As of the Close of Business on June 30, 1976

ASSETS

First mortgage loans	\$152,812,292
Loans secured by shares of this Association	1,482,268
Family Finance Center loans	12,160,366
Real estate owned	776,640
Cash, U.S. Government and other investment securities	11,874,653
Stock in Federal Home Loan Bank	1,252,500
FSLIC prepaid premium	454,420
Accrued interest receivable	393,186
Office buildings	4,575,155
Furniture, fixtures and equipment	298,081
Other assets	4,939,851
TOTAL ASSETS	\$191,019,412

LIABILITIES AND RESERVES

Optional, full paid, single payment shares	\$153,300,276
Loans in process	2,162,754
Federal Home Loan Bank advances	13,729,500
Interest accrued on Federal Home Loan Bank advances	89,027
Borrowed money from banks	4,680,000
Interest accrued on borrowed money	17,338
Advance payments by borrowers for taxes and insurance	1,305,380
Deferred income	3,647,544
Other liabilities	3,808,759
RESERVES	8,278,834
TOTAL LIABILITIES AND RESERVES	<u>\$191,019,412</u>

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[418] UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Jan. 20, 1977

Deposition of ANGEL MIRANDA, taken in the office of Messrs. Nelson, Nelson & Lombard, Suite 1100, 344 Camp Street, New Orleans, Louisiana, on Monday, January 3, 1977.

APPEARANCES: (Omitted)

* * *

[4] EXAMINATION BY MR. NELSON:

Q Your full name is what, Sir?

A Angel, A-N-G-E-L, Miranda, M-I-R-A-N-D-A, the second name.

Q And your occupation?

A I am Area Economist in the HUD Area Office, in New Orleans, Department of Housing and Urban Development.

Q What are your duties as Area Economist?

A I am advisor to the Area Director of Housing Marketing Analysis, and, well, there are different responsibilities. For example, I am supposed to determine the income level for subsidy for admission to subsidy housing, and also I am in charge of establishing parental projects, at least, to advise. He may agree or disagree with me.

Q In connection with the various programs of HUD, FHA and HUD we are talking about the 203 (b)

and 221 (d) (2), is it within your duty to determine how many cases have been opened by HUD, let's say over the last four or five years under each one of these programs?

[5] A I am supposed to have all this information available. If it is not available, it is because it is not provided by the central office. I am supposed to find out some place, so I need it for any analysis.

Q My question, they are going to concern themselves with Orleans and Jefferson Parishes, all right?

A Yes.

Q First of all, I am going to show you an affidavit signed by you on April 22nd, 1976, together with a number of attachments, and I am going to mark this for identification, Miranda No. 1 for our record. You have read through this affidavit, is that right, Mr. Miranda?

A Yes, I did.

Q And was this affidavit substantially correct?

A Yes, sir, it is substantially correct, but remember, it is an opinion.

Q I would like to include in the documents that you have here and include information and knowledge you may have, [6] and could you tell me, let's say 1975, how many homes were residences for one to four units were insured under the 203 (b) in Orleans and Jefferson Parishes, do you have this anywhere in your records?

A Yes, 1974?

Q '75, let's start with '75.

A The total number of housing units insured by our area office in the whole jurisdiction, two thousand seven hundred and thirty.

Q What documents are you reading from?

A 1975 document.

Q Schedule 130 A, you are reading from Schedule 6, we have on this document on the affidavit that we have here for your affidavit each one of these documents are listed and identified as a schedule?

A Yes.

Q For the record, you are reading from Schedule 6, within the jurisdiction, in the New Orleans Area Office, in '75, you had how many homes insured?

[7] A In one single year, two thousand seven hundred and thirty in the jurisdiction.

Q Approximately how many of these two thousand seven hundred and thirty were in New Orleans?

A In New Orleans, probably about fifteen to twenty per cent.

Q How many in Jefferson?

A I would say from twenty to twenty-five per cent, in 1975.

Q Yes, sir, so, in Orleans and Jefferson, if we would add those two percentages —

A About forty-five per cent in both.

Q What about '74?

A Well, I would say it is about the same

Q Schedule 5 is for 1974?

A Yes, right there. (Indicating)

Q And you would say about the same percentage of those listed on Schedule 5 were insured in Orleans and Jefferson Parish?

A Yes, sir.

Q What about 1973, on Schedule 4?

A I would maintain the same percentage, maybe a little different, but it should be [8] about the same.

Q Would you say '72 and '71 were about the same thing?

A Yes, sir.

So, in the five year period, I would say that from, in Orleans, from fifteen to twenty per cent, and in Jefferson, from twenty to twenty-five per cent.

Q That percentage is a percentage of the number that you have on these various schedules?

A Yes, agreed, very closely.

Q Now, on Schedule No. 2, you have some dollar figures. These dollar figures represent what year?

A Well, we have two parts. We have information for one single year on single homes insured by HUD, in the whole state. You can see the table divided into two parts, mortgage and loan program activity for the year 1973, and then, mortgage and loan program activity cumulative from 1934 to 1973.

Q Right.

A The first part is for the one, single year [9] 1973, we insured in New Orleans three hundred and twenty-five homes.

Q That is New Orleans?

A Yes, and in Jefferson, one thousand eight hundred and ninety-six houses.

Q Those are residences?

A Yes, that is what I told you, maybe, but in New Orleans jurisdiction, about fifteen to twenty per cent in 1973, and in Jefferson, about twenty to twenty-five per cent.

Q Do you have schedules at least the documents for '71 through '75 similar to the ones you have for '73?

A Like this one? No, sir, not here. I have 1972, but not '71.

Q What happened, are the ones for '73, '74 and '75, are those available anywhere?

A Well, '73 is this one, and '74 is probably available in the central office, but we don't have copies here in our area office.

Q Mr. Miranda, have you ever made any study of the percentage of FHA/VA insured homes as against the total number of [10] residences sold in this city?

A You are talking about on single homes?

Q Yes.

A Well, we prepared market analysis, housing market analysis, and the basis is the building permits issued by the different state agencies, Jefferson, Orleans, St. Tammany and St. Bernard, when we add up all those building permits by years, easily, we can determine the amount of houses constructed in the particular year. At this moment, I don't have an idea of how many housing units have been constructed from 1970 to '75.

Q Do you have that information in your office?

A Yes, sir, I have that.

Q Do you also have the information as to the total number of new residences constructed, what percentage is FHA/VA insured?

A Of the total, including private and public?

Q I am talking about residences. I am not interested in public. You are talking about public housing?

[11] A Well, no.

Q You know, the homes are insured either by the homestead, what we call conventional insurance, and also the houses are also insured by the Federal Government through HUD or VA or FHA, and we put them all together, FHA, VA and HUD, we come up with the total, what are the percentages of HUD compared with the whole totals.

A No, sir, we don't have any information on that detail. I don't think we can tell you how many HUD insured or an estimate on the whole volume of construction of the area.

Q What about taking into consideration the volume sales, not of new construction, but the homes that are sold in this city, let's say, a five year period from 1971 through the end of '75, would you have any information in your office concerning the percentage of FHA/VA approved, I mean, insured homes for those mortgages?

A I don't have at this moment that information [12] but it could be determined.

Q It could be determined?

A Yes.

Q Could you get that for me? I don't mean right now, I mean like tomorrow.

A What I am telling you is that the information is available. Like I told you, we can determine, estimate on the basis of the building permits issued, and, of course, what amount of those are HUD insured and VA, and so, the balance may be homestead.

Q I am not only talking about building permits, I am talking about existing homes that are sold in the market, homestead may be one, from one year to twenty

ty years, that are sold, if those homes were FHA/VA insured, on those homes?

A No, you have to base everything on the building permits for one simple reason. As soon as anybody obtains a building permit for construction of new homes, three months later, that permit, it is voided if not constructed, or if the home is under construction, if we obtain [13] the whole amount of the building permits in one single year, three months later, we know how many have been constructed or under construction. You can see what I mean?

Q Do you have any record of homes that are sold and are not constructed this year?

A Not, not an exact number, just an estimate. I don't think nobody can have that information.

Q Would you have any documents in your office upon which you would depend in order to give an estimate?

A Yes, sir, building permits, and that is the only possible way.

Q The building permits, as far as you are concerned, is the only possible way?

A Yes.

Q If you don't understand this question, let me know, but I have been owning my own home for eight years. If I would want to sell my home this year to Mr. Smith, and Mr. Smith could buy it, and he probably, if he qualifies, secure a FHA/VA loan?

[14] Yes.

Q My question is, do you have any records in your office, the New Orleans office, as to how many of these loans have been insured by HUD or VA or FHA?

A Well, not what you mentioned to me, no, I don't have it, but we have an office, a division in our area of-
fice that could get that information.

Q What is the name of that?

A Well call the office, let me see, it is, I am trying to recall the name — the Home Mortgage and Credit.

Q Do you know the name of the person in charge of that?

A The person in charge is Erin Hogan. He is the head of the Section.

Q He is located here in New Orleans?

A Yes, sir. I think they can probably, they may have the information on the total amount of mortgages in dollar amount and insured up to date.

MR. NELSON:

In connection with this witness's testimony, I would like to attach to [15] his deposition his affidavit identified and signed by him, together with the schedules 2 through 8.

EXAMINATION BY MR. NELSON:

Q Excuse me, Mr. Miranda, in connection with the schedules, you have Schedule 7, and that is this document? (Indicating)

A Yes, sir.

Q What is that, what is that Schedule 7?

A Schedule 7 is the insurance of multi family project. Just a moment ago we were talking on single homes. Now, we are talking on multi family project.

Q These are residences, multi family houses?

A Housing projects.

Q Two family, three family, four family?

A No, we are talking of housing complexes of more than four units or above, but in this particular case, I don't think we have any of the four units. We are talking about eighty or more units. I think we have sixty units.

* * * *

[421] UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Feb. 14, 1977

Deposition of JULIAN O. HECKER, JR., taken in the office of Messrs. Nelson, Nelson & Lombard, Suite 1100, 344 Camp Street, New Orleans, Louisiana, on Friday, January 7, 1977.

APPEARANCES: (Omitted)

* * * *

[4] EXAMINATION BY MS. SAIK:

Q Would you state your full name, please?

MR. O'CONNOR:

Note for the record that we have filed a motion to squash the subpoena that was served upon the witness that has been noticed for February 2nd, 1977. However, pursuant to the discussions that we have had as

far as the production of documents, we are going ahead with the deposition to accommodate the parties.

MS. SAIK:

I just want to ask a few questions, introductory questions, and go through the documents that have been requested and determine what is available and what is not, without undue expense.

EXAMINATION BY MS. SAIK:

Q Mr. Hecker, what type of business are you engaged in?

A Mortgage banking.

Q What is the name of your business?

A Carruth Mortgage Corporation.

[5] Q Where is that located, Mr. Hecker?

A 3601 I-10 Service Road, Metairie

Q That is the main office?

A Yes.

Q Where are the other offices, located, if you have other offices?

A I don't know the exact addresses.

Q What parishes?

A Orleans, Jefferson, and we have one in Slidell, St. Tammany and Houma and Baton Rouge.

Q What is your position with Carruth Mortgage, Mr. Hecker?

A President.

Q How long have you been President of Carruth Mortgage?

A A little over a year and a half.

Q How old are you, Sir?

A How old am I — I was born in '33 — that would be what — Forty-two, forty-three —

Q Is Carruth Mortgage a Louisiana corporation?

A No, an Arkansas corporation.

Q In what states does it do business?

A Louisiana, Mississippi, Texas, and we are authorized to do business in Arkansas, [6] but we have not done it.

Q Is Carruth Mortgage a subsidiary of any other company?

A Yes.

Q What is the name of that?

A Laurel Mortgage.

Q Where is that domiciled?

A Louisiana.

Q Are you a subsidiary of any other corporations?

A Yes.

Q What is that?

A Mellin National Mortgage (spelled phonetically).

Q Where is that located?

A Pittsburgh.

Q Pennsylvania?

A Yes.

Q And what kind of business activities does Carruth engage in primarily?

A Mortgage-banking.

Q Could you give a brief description of what that entails?

A Well, we have loan acquisitions, that would be acquisitions of raw land, development of the land, construction, lender, [7] permanent lender, secondary financing.

Q As president, are you generally familiar with the aspects of the operations that you just described?

A Yes.

Q Now, as your Counsel mentioned at the outset of this deposition, you had been asked to bring with you certain documents regarding various aspects of your business. Are you able to comply with the request for copies of forms presently used for loan applications by Carruth?

A Yes, I have them.

Q May I see those, please?

A (Witness complies.)

Q Mr. Hecker, I think if you would just hand me each one and just give a brief description of what the document is, I would appreciate that.

A The first is a general credit questionnaire, which we take upon application, that gives us just the general information that we need.

Q I will mark this Hecker No. 1 for [8] identification. Does your company prepare this form?

A Yes.

The next is FHA form 2900, which is FHA's application form.

Q I will mark this for identification as Hecker No. 2. Is the form provided by the government?

A Yes.

Q Go ahead, Sir.

A The next is VA form 26-1802A, which is a VA application form.

Q I will mark this for identification as Hecker No. 3. Is this form also provided by the government, Mr. Hecker?

A Yes, sir. The next is form number 65, which is the conventional loan application form.

Q All right, I will mark this Hecker-4. Who prepares this form?

A We prepare all the forms, as far as, you mean who prints the form?

Q No, who actually, the information contained here is decided by your company?

A Yes, we prepare all the forms.

[9] MR. MC CALL:

Are you asking him who fills out the forms or who decides what information has been requested?

Do you understand the question that way?

THE WITNESS:

As I understood it, who fills out the form, is that what you are talking about?

EXAMINATION BY MS. SAIK:

Q The information that is contained on Hecker No. 4, in terms of information desired by your company, who has made the decision as to what questions or information should be obtained on this form and presently obtained on this form?

A I don't understand the question.

MR. O'CONNOR:

Who establishes the format for the form?

THE WITNESS:

This is a federal home loan mortgage form. To be frank, it is a [10] standard form.

MR. VAUDRY:

Which document, Pat?

MS. SAIK:

Hecker-4.

MR. VAUDRY:

For point of clarification of what you thought you were answering, do I understand your testimony to be with respect to all these forms that Carruth fills out the forms?

THE WITNESS:

That is correct, fills in the information, and for future clarification, number one is a questionnaire, and that is our form. We prepare the questions asked or the questions that we determined that we needed. The FHA and VA forms are standard government forms. We do not print the FhA or VA forms. We do print this form. (Indicating)

MS. SAIK:

Referring to Hecker No. 4.

EXAMINATION BY MS. SAIK:

[11] Q How long has this form been used by your company?

A Say within the last — a couple of years. I wouldn't know actually the estimate.

Q Another item, Mr. Hecker, directed a request for a document showing the names and addresses of home-

stead, real estate companies, brokers and realtors with whom your company is doing business or has done business since 1971.

Were you able to comply with this request?

A No.

Q Could you please state why?

A It is not really available.

Q Where would that information be contained, if it is available?

A We would have to dig, because we deal with many firms on various terms. If you are talking about solicitation to do business, we have solicited, I would think, hundreds of firms through letters, telephone calls, et cetera.

Q Where are these firms located?

A Throughout the country.

Q Mr. Hecker, do you have any, or aware of any [12] directories that were published by trade organizations that would contain the names and addresses of real estate companies, insurance companies, savings and loan or other financial institutions?

A Yes.

Q Could you give me the names of the directories that you know about?

A Well, I am not sure of the exact names.

Q Well, who were they put out by might be simpler to answer.

A I believe the Real Estate Board of the State put out a directory.

Q The state organization?

A Yes, the Louisiana State, I believe.

Q And that is, that contains names and addresses of whom, sir?

A Brokers and agents.

Q Does your company receive copies of this directory?

A Yes.

Q Approximately how many copies does your company receive?

A I really don't know. I believe one or two, [13] I am not certain.

Q Are there any other directories that you know about?

A You are talking for real estate agents?

Q And/or financial institutions.

A Well, of course, we receive the Savings and Loan League, which has the same thing as the — there is a Savings Bank Guide.

Q The Louisiana Savings and Loan League, does that contain addresses of realtors and brokers or savings and loan associations?

A Savings and loan associations.

Q Is that a state organization also?

A It is not a state as such, I think it is a savings and loan league, a group of savings and loans, I think.

Q A minute or two ago, you said that you dealt with many firms or solicited hundreds of firms outside of the state. Have you also solicited within the state of Louisiana?

A Yes.

Q What types of organizations do you deal with in Louisiana, or businesses or persons?

[14] A You are talking about from an investor point of view?

Q Who might you issue mortgages to, who might you resell your paper to?

A Primarily savings and loans or homesteads.

Q Have you ever solicited through realtors or brokers in Orleans and Jefferson Parishes?

MR. O'CONNOR:

Solicit for what, to place loans, make loans, what?

MS. SAIK:

It could be either one. I am speaking of the business.

MR. O'CONNOR:

If you would specify a little bit, it would be easier to answer the question.

EXAMINATION BY MS. SAIK:

Q Has Carruth ever contacted realtors or brokers in Orleans and Jefferson Parishes in connection with the offering of mortgage money available for the purchase of residential real property?

A From the point of originating single family [15] residences, loans, yes.

Q What form does that contact take?

A We have, more certainly within the last six months, started an approximate weekly bulletin that we put out, which is mailed to approximately three hundred agents and brokers, giving our current quotes.

Q Does this weekly bulletin contain any other information?

A Just quotes.

Q You are speaking of —

A Interest rates, discounts available on that particular day. We also make personal contact by solicitors at the real estate broker's agent's office.

Q How long have you been publishing this weekly bulletin?

A Approximately six months.

Q Have you ever distributed any brochures describing the services that Carruth would provide to realtors in Orleans and Jefferson Parishes?

A Yes.

Q Since 1971?

[16] A Oh, yes, several different kinds.

Q For the record, Counsel, I believe that through the testimony that we have just gone through, that plaintiff would be satisfied, in connection with the descriptions that Mr. Hecker has given, concerning the people with whom Carruth does business, in lieu of producing documents showing the names and addresses of all homesteads, et cetera, and we would consider this sufficient.

MR. O'CONNOR:

His testimony?

MS. SAIK:

Yes, sir.

(Off the record)

EXAMINATION BY MS. SAIK:

Q Items three and four on the subpoena are concerned with documents which would identify mortgage companies, homesteads and mutual savings banks and insurance companies or government agencies with whom Carruth does business and also the volume of loans placed or applied and [17] also information concerning the volume of residential real estate loans carried by Carruth or placed with others has been requested.

Is any of this information available, Mr. Hecker?

A Not in the form of the question.

Q Would it be necessary to, for example, go through each loan application that was or each file —

A If you are trying to figure out when we originate and when we sold to specific investors, yes. We have computer print outs which we could request from a contractor that does our computing work, but it would not give you a date that we sold the loan to them, the detailed information you are looking for.

Q What kind of information, if you know, is presently contained in computer form?

A Interest rates, balances, payment numbers.

We have the names and addresses of the individuals.

Q Mr. Hecker, can you give us an approximate number of loans that your company closed [18] in 1976, residential loans?

May I, just for point of clarification, when I am asking these questions, I am asking for residential real property.

MR. O'CONNOR:
Single and multiple?

MS. SAIK:
One to four family.

THE WITNESS:
Offhand, I don't know actually what number of loans. It is just under fifty-four million single family.

MS. SAIK:
That is from 1976?

THE WITNESS:
Right.

MR. O'CONNOR:
That is in dollar volume?

THE WITNESS:
Yes.

EXAMINATION BY MS. SAIK:
Q Can you give the dollar volume for any of the years from '71 to '75, roughly?
A I think last year was about fifty million, just guessing. I don't know prior to [19] that.
Q Would any of this information be contained in your annual report?
A I don't know whether the exact volume of residential organizations is, but we have that information available in other form.

Q Do you have, about in 1974, what was the total volume of mortgages placed, whether it was higher or lower than fifty-eight million?

A Lower.

Q Fifty million?

A I think it will be lower than that. I don't know, I just can't tell you.

Q Would this information be located on your financial statements for the years 1971 through 1976?

MR. MC CALL:

I think you already asked that question, and that it would not be available in the way you asked it.

THE WITNESS:
I don't believe it is.

EXAMINATION BY MS. SAIK:
[20] Q Turning back to 1976 then, you stated about fifty-four million loans were placed on residential real property. What parishes would this include, or do you know?

A I have no way of knowing. We have our offices in the parishes that I have answered before, and as I said, we originate out of those offices, and they could be in numerous parishes.

Q So, these figures you gave me was for the entire state of Louisiana, is that correct?

A I believe, again, I am not certain, but I believe that the fifty-four million is all restricted to Louisiana, yes. It could only be a minimal change, an insignificant change.

Q It is your testimony that it would be difficult to break this aggregate as to what was done in each parish?

A We don't keep it that way. We keep it by branch, but that doesn't mean it is restricted to a particular parish.

(Off the record)

[21] EXAMINATION BY MS. SAIK:

Q Mr. Hecker, what I am after here is trying to determine the number of mortgages issued and the volume of mortgages issued in Orleans and Jefferson Parishes from your company for the years 1971 to 1976. Do you have this?

MR. MC CALL:

I think we would be prepared to stipulate that it would be substantial.

MR. NELSON:

We want the number.

THE WITNESS:

I have no idea. I would agree with them, it is substantial.

EXAMINATION BY MS. SAIK:

Q It is your testimony that this information is not presently contained or kept by your office?

A What I said, it was kept by the branches, not the parishes.

Q How many branches do you have in New Orleans?

A We have one in New Orleans East and one directly across the river. I'm not sure if it is Orleans or Jefferson [22] Parish, the one in question, but there is at least one in Orleans Parish.

Q You have one in New Orleans East and one just across the river?

A Just across the border line. I am not sure if it is in Orleans or Jefferson.

Q How long would it take to get that information from these offices?

A What information are you talking about?

Q The information concerning the dollar volume and/or the number of residential mortgages issued for the years in question, 1971 through '76?

MR. O'CONNOR:

By parish or branch?

MR. NELSON:

By branch.

THE WITNESS:

I am not sure it is available. We just keep it as memoranda type thing, to know what the branch produces. I believe I could get it for you, but it would take some time.

EXAMINATION BY MS. SAIK:

Q What records would you use to obtain this [23] information?

A What records would we use? It would be hand computed.

Q It is your testimony that Carruth Mortgage does not keep an aggregate figure of the number of loans or mortgages issued each year?

A That is not what I said.

MR. MC CALL:

You asked him about branches.

EXAMINATION BY MS. SAIK:

Q You do have an aggregate figure for the state or total operation?

A That is correct, and we know how much is produced in each branch.

Q Where is that information kept, in the branch offices?

A It is kept in the branch offices, but we compile it in the home office.

Q Is it kept on computer?

A No.

Q Can you identify or give a description of the documents that that information is contained on?

A It is a hand computed total related to closing [24] in the month and just continually add it each month.

Q What department of Carruth is this kept in, accounting department, do you have an accounting department?

A The actual totals are kept by the secretary of the corporation. There is no particular department that keeps those.

Q Who is that, Sir?

A Mattie Toole.

Q Is she located in your office on Metairie Road?

A Yes, that is correct.

Q Mr. Hecker, could you provide to us, not at this time, but in a reasonable time the number and dollar volume of mortgages placed on residential real property for each branch of Carruth Mortgage Company in Orleans and Jefferson Parishes?

A Yes, I believe so.

Q In your opinion, Mr. Hecker, can you give us a rough approximation of the percentages of the number or volume of loans placed on properties located in [25] Orleans and Jefferson Parishes?

A Can we go off the record?

Q Could you state that on the record, please?

A We presently have three offices which are located either in Jefferson or Orleans Parishes. The production from these three offices comes from either Orleans or Jefferson Parish, and I would feel that somewhere between ninety and ninety-five per cent of the production of these offices would either be in the Parish of Jefferson or Orleans. Does that make sense?

MS. SAIK:

That is fine.

EXAMINATION BY MS. SAIK:

Q On the same information that we just have been inquiring about, the number and volume of residential loans in Orleans and Jefferson, what percentage of those loans would be guaranteed by government pro-

grams, such as, speaking of the Federal Housing Administration and/or HUD and VA or Veterans Administration?

A It varies from year to year. I can tell you [26] for the year 1976. For '76, it was approximately sixty per cent VA, and, then, about twenty per cent conventional and twenty per cent FHA.

Q For the years 1971 to 1975, could this information regarding the percentages be provided?

A I believe so.

Q Mr. Hecker, on the mortgages issued by your company, which are guaranteed by FHA or HUD, does the buyer pay a premium for this insurance?

A You mean is there a FHA mortgage insurance premium?

Q Yes. What is the figure on that?

A One-half of one per cent.

Q Does Carruth collect this mortgage premium?

A Yes.

Q What do you do with the premium once it is collected?

A Remit it to FHA.

Q Where is the location that it is remitted to?

A I believe it is in Washington.

Q How often is this done?

A It is done on a monthly basis, but annually [27] on each account. HUD bills us monthly, in other words, but annually per account.

Q Does Carruth require title insurance as a condition of making the mortgage?

A Yes.

Q Is this true for conventional loans as well as government insured loans?

A Yes.

Q To your knowledge, Mr. Hecker, what title insurance companies, if any, are utilized to obtain title insurance?

A You are asking me specific names — I am not prepared for this, but we have them.

Q Do you know where these firms are located?

A Not specifically, all over the United States.

Q Mr. Hecker, again, turning to mortgages on residential real property, does Carruth resell its mortgage paper to any government agencies?

A Yes.

Q What government agencies, please?

A Well, wait —

Q Or a quasi government agency?

A Yes, Fannie Mae, Gennie Mae.

Q What is Fannie Mae?

[28] A It is a quasi government organization.

Q What is it set up to do?

A Funnel mortgage support for the secondary market.

Q Where is Fannie Mae headquartered?

A Washington. We deal out of the Dallas office.

Q So, when you resell to Fannie Mae, it is to Dallas?

A Yes.

Q What about GNMA, is this the same type of operation as Fannie Mae?

A It is serviced through Fannie Mae, but Gennie Mae is a government organization.

Q Is it also designed to provide secondary aid to the secondary market?

A More of a special assistance type.

Q To whom?

A Low income type people.

Q Does it provide a lower rate of interest?

A It depends on the particular program, yes.

Q I am talking about Gennie Mae.

A It depends on the program, but generally, yes.

Q Does it provide perhaps that no down payment is to be made?

[29] A I don't believe that they have ever had no down payment.

Q Can you give the dollar volume of mortgages resold to either Gennie Mae or Fannie Mae for 1976 on residential real property?

A Offhand I couldn't.

Q Is this information readily available?

A That would be something that we would have to do some research. It would be a hand research type deal.

Q Could you give the percentage, any kind of breakdown, in terms of percentages, numbers or volume?

A We are talking about FHA or VA only, right?

Q Or conventional loans.

A Well, I would not be able to give you any of it today. It is available. It would take some research. It is not in the computer.

Q Mr. Hecker, does Carruth perform any closings?

A No.

Q None?

A None.

Q Carruth does, however, provide brokering [30] services for the mortgages?

A I don't understand the question.

MR. MC CALL:

I think I would be constrained to object to the form of the question, unless you identify more particularly what it is you mean by brokerage service.

MS. SAIK:

By brokering service, I mean bringing together a buyer and seller for the particular mortgage or mortgage paper.

THE WITNESS:

Wait — I don't understand your question. First, we do not, if you are asking do I bring a buyer and seller on real estate transactions together, no, we are not real estate agents or brokers.

EXAMINATION BY MS. SAIK:

Q I understand that. I am talking about in terms of selling mortgage money or mortgage paper. Do you broker in that area?

[31] MR. MC CALL:

Again, I would ask that that question be more precisely phrased, and the witness be informed of what you mean by, "Do you broker in that area."

MR. NELSON:

If the witness doesn't understand, he will say so.

EXAMINATION BY MS. SAIK:

Q Besides issuing mortgages to the buyer of residential real property and reselling some of that real paper in the secondary market, does Carruth perform any other financial transactions? I am talking about your business activities.

MR. O'CONNOR:

Are you speaking about residential?

MS. SAIK:

Yes.

THE WITNESS:

Like I said before, basically we originate the loan and sell it in the secondary market. That is our business.

EXAMINATION BY MS. SAIK:

[32] Q Mr. Hecker, do brokers, real estate brokers in Orleans and Jefferson Parishes ever contact employees of Carruth Mortgage in connection with obtaining financing for a prospective buyer?

A You are talking about — yes — that is our business.

Q It is a common occurrence for —

A That they come to us to make loans, yes.

Q A realtor will give you a call and say, maybe I have got a buyer, and do they bring them over to your office?

A Sometimes, not always.

Q Do realtors ever provide you, assuming you have got a buyer and they are interested in obtaining a mortgage for buying a home, and Carruth decides they are going to finance it, does Carruth ever turn to the realtor to obtain any documents or information in connection with the procedures in actually finalizing and processing this loan?

MR. O'CONNOR:

What do you mean by procedures?

MS. SAIK:

[33] Obtaining a description of property, for example, filling out of forms that are necessary for Carruth to process their loan.

THE WITNESS:

They assist in obtaining documentation for processing of the loans, certainly.

EXAMINATION BY MS. SAIK:

Q What information specifically is provided by realtors?

A I don't think — if you are asking me something that is consistent, it is not. It depends on the case.

Q Could you give us some examples?

A Surveys, descriptions of properties that you mentioned. They will expedite obtaining a termite certification, things like that. It is mainly to expedite, that type of thing.

Q Who does the loan closing for Carruth?

A The loan closings are done by independent attorneys.

Q Is Carruth ever present at the loan closing?

A No, very rarely, let's put it that way.

Q Do you have any particular attorneys or [34] companies that you refer a client to for a loan closing?

A It is rare that we refer to a specific attorney. Most people have an attorney in mind. We have in excess of, I am using a conservative figure, in excess of three hundred attorneys that are approved attorneys with us. We do not assign an attorney, per se, unless nobody else has a choice or preference.

Q Who prepares the closing statement or sheet?

A The closing statement that is used by the attorney?

MR. O'CONNOR:

Identify the word closing. The closing sheet and closing statement are two different things.

MS. SAIK:

The closing statement.

THE WITNESS:

The attorney prepares it.

EXAMINATION BY MS. SAIK:

Q Carruth would have nothing to do with the preparation of the document in connection with the closing?

[34] A We don't have an attorney on staff. That is a legal matter, no.

Q Do you receive any documents after the property has been transferred in connection with a closing, do you receive a copy of the closing sale, for example?

A Yes.

Q Is this required by government regulations?

A I don't know if it is required by government regulations. It is required by us. We have general loan closing instructions which we require all approved attorneys to follow. It gives them specifically what they have to do for us and provide for us.

Q Could we get a copy of that document, Mr. Hecker?

A Yes, sure.

MS. SAIK:

Mr. Hecker, those are all the questions I have. Some of the other counsel may have a couple of questions.

MR. O'CONNOR:

Let me ask you one or two things, [36] first, with regard to the subpoena. Other than the items which we have agreed to produce to the extent they are available, is your subpoena satisfied?

MS. SAIK:

Yes.

MR. NELSON:

Yes, as of now, yes.

EXAMINATION BY MR. MC CALL:

Q With reference to your testimony about communications to real estate agents, which I understood were flyers or letters or cards of some sort, are these in the nature of advertisements as to the availability of your services?

A Yes, availability of funds and prices.

Q Would it be fair to describe the business of Carruth as that of lending loans on real estate?

A That is correct.

Q To whom are those loans made?

A To the purchaser or borrower of the real estate.

Q That is to say the owner or prospective owner?

[37] A Correct.

Q Do you conceive the services of a real estate agent to be to bring the purchaser and seller together?

A Yes.

Q Are these services in any way an integral part of your lending?

A No.

Q You made reference to the fact that occasionally real estate agents would bring people over to Carruth?

A Yes.

Q Is this an essential for Carruth to make these loans?

A For the agent to accompany them?

Q Yes.

A No. In fact, I think most of them aren't accompanied by real estate agents, at that time.

MR. MC CALL:

Thank you. I believe those are all the questions I have.

EXAMINATION BY MR. VAUDRY:

Q The flyers, as Mr. McCall referred to, in your mail out of rate quotes, is that [38] not mailed exclusively to realtors?

A No, to any possible sources of business, developers, builders and so forth.

EXAMINATION BY MR. NELSON:

Q Mr. Hecker, the flyers that are mailed, the purpose of mailing of these flyers is to encourage people to send prospective borrowers to you, is that correct?

A Correct.

Q When these are mailed to realty companies and real estate agents and brokers, it is hoped that that would encourage them to send prospective buyers to your company?

A That is the purpose.

Q Are any of these flyers, these mailings, are they sent to the general public, to occupant of a particular house?

A No.

Q So, as far as you are concerned, you expect that your business will come through, among others, but some of the people to which these flyers are sent?

A The vast majority of our business is [39] originated through this.

Q Now, when you said, testified that occasionally

real estate agents accompany people, would you have any idea as to how often real estate agents are involved in setting up the appointment?

A No, I would not. The appointments are set up primarily with the girls. If they come in and set up an appointment, I don't know.

Q Is Carruth Mortgage Company involved in any organizations in which real estate agents are also members, realty companies?

A You are talking about the Real Estate Board and things like that?

Q Yes. You are a member of the Real Estate Board?

A I think we are a member of a different number of trade organizations, as to the specifics, I don't know.

Q Are real estate agents members of the same organizations that Carruth is a member of?

A Yes, I would have to say I believe we are. [40] I would have to find out. I'm not sure.

Q I would like to get that information, and the purpose of these meetings.

MR. O'CONNOR:

What meetings?

MR. NELSON:

What is the purpose of those organizations.

MR. O'CONNOR:

If you can name a particular one.

MR. NELSON:

He knows what organizations he is a member of.

THE WITNESS:

I don't know. I'm not sure. I believe we are, and that is what I am saying.

EXAMINATION BY MR. NELSON:

Q You don't know the function of the New Orleans Real Estate Board?

A We would not be an active member as such. We go primarily the same as we go — a matter of trying to generate business, meet people, shake hands and not be active in its programs as such.

[41] Q How long have you been with Carruth Mortgage?

A Fourteen years.

Q What were you before you were president?

A From the beginning, I started out as a clerk, assistant, vice president, executive vice president, president

MR. NELSON:

I have no further questions.

MR. O'CONNOR:

You are looking for summary reports showing residential volume from the Orleans and Jefferson branch offices for such years as they are available?

MR. NELSON:

The number of loans.

MR. O'CONNOR:

Whatever the summary reports show.

MR. NELSON:

I am interested in the number of loans and volume. If all you can give is a summary report —

MR. O'CONNOR:

He has stated the summary report shows that.

MR. NELSON:

[42] I am interested in the number of loans and volume.

MR. O'CONNOR:

To the extent that that is available on the summary report.

MR. NELSON:

I am not conceding that I am going to stop there.

MR. O'CONNOR:

If you are not happy with the summary report, then we can start there.

MR. NELSON:

My understanding, as far as I am concerned, I want certain information now, and if you tell me I can't get it, we are going to have to pick up from there.

MR. O'CONNOR:

Mr. Hecker has stated that to his knowledge the information that you are speaking about is disclosed in

the summary report, the hand records that are kept by the various branch offices.

MR. NELSON:

I don't care what they call it.

[43] MR. O'CONNOR:

Let's get it understood, we have agreed to get the summary reports, make copies and make them available to you.

MR. NELSON:

Counsel, we are not listening to each other. I want the number of loans made by the branches and total volume of money. If it comes on the summary report, I will take it. I don't care how it comes to me, but I am not agreeing if the summary report doesn't give me what I want that I will stop there.

MR. MC CALL:

Skip has said he will produce these records, and if they don't have the information that you want, you are not stopped. He is telling you that.

MR. O'CONNOR:

If you are not satisfied, I will do what I reasonably can to satisfy you. I am not committing myself to making a manual search for the records, if that is what is necessary to satisfy [44] you.

MR. NELSON:

I am not agreeing to that. I just want the information now. It is up to you what kind of search you want to make.

MR. O'CONNOR:

Not entirely up to me.

MR. NELSON:

Well, Mr. Hecker.

MR. O'CONNOR:

We would voluntarily submit to you all readily available information, namely, the summary report. If you are not satisfied, you are not stopped, and you may pursue further discovery. We think from his testimony that we have satisfied the specific questions you have. If it doesn't satisfy you, tell me what the reason is, and if we can satisfy you readily, we will do it. We are not saying you are stopped to go any further.

MR. MC CALL:

You are saying you are not committed [45] to give the ultimate information he may want, because —

MR. O'CONNOR:

This also applies to FHA and VA loans?

MR. NELSON:

And number of trade organizations he's a member of.

MR. O'CONNOR:

Okay.

MR. NELSON:

The loan closing procedure, and that is about it.

MR. VAUDRY:

With respect, Mr. Hecker, to the initial disbursement of funds, in connection with the closing of loans, is the dispersal at all times of Carruth Mortgage's own funds?

THE WITNESS:

We close a loan in Carruth Mortgage Company's name, and we disperse the loan, and it is warehoused sometime later, depending on a day, whenever we need the funds.

* * * *

CARRUTH MORTGAGE CORPORATION
LOAN PRODUCTION — ORLEANS AND JEFFERSON PARISH BRANCHES

	FHA		VA		CONVENTIONAL		TOTAL	
	NO.	AMOUNT	NO.	AMOUNT	NO.	AMOUNT	NO.	AMOUNT
1971	453	\$9,264,675	409	\$10,382,150	113	\$3,762,527	975	\$23,409,352
1972	223	4,962,500	565	14,828,895	214	7,169,455	1,002	26,960,850
1973	57	1,151,050	425	11,056,325	145	4,072,050	627	16,279,425
1974	135	2,753,150	490	14,071,875	136	4,253,500	761	21,078,525
1975	333	7,621,400	582	17,454,075	228	8,078,000	1,143	33,153,475
1976	318	7,566,000	565	18,547,950	118	4,438,700	1,001	30,552,650
	1519	\$33,318,775	3036	86,341,270	954	31,774,232	5509	\$151,434,277

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[459] UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Mar. 29, 1977

Deposition of JAMES W. MILLS, JR., taken in the office of Messrs. Nelson, Nelson & Lombard, Suite 1100, 344 Camp Street, New Orleans, Louisiana, on Thursday, January 6, 1977.

APPEARANCES: (Omitted)

* * * *

[4] EXAMINATION BY MS. SAIK:

Q Mr. Mills, what type of work do you do?

A I am President of Lawyer's Title Insurance Corporation, a franchised agent of Richmond, Virginia.

Q Do you insure policies of title insurance for residential real property in Orleans and Jefferson Parishes?

A Yes, we do.

Q Does the company that you deal with here in Louisiana actually insure the property, or is this done by your parent — or you mentioned you were a franchisee of a company in Virginia?

A Richmond, Virginia, right. The national company, Lawyer's Title Insurance Corporation is actually the underwriter and insurer. We issue the policies as their agent.

Q What service does your company provide, Mr. Mills?

A We are what is known as a full line title insurance company. We do abstract work, title certification, underwriting of outside attorney opinions, as well [5] as closing the deed and mortgage transactions.

Q Does your company use any public records to compile the data which your company is concerned with?

A We have the only title plan in the city. By this I mean, we take the public records which are normally in name sequence and put these into a computer and rearrange them in property sequence. To do this, we take data from the Conveyance Office Books in Orleans Parish and from a film of the complete documents in Jefferson Parish.

Q Do you use any other records that might be available?

A In the preparation of the title work?

Q Yes.

A Offhand, I can't think of any.

Q Now, you mentioned you participate at closings. Who is usually present at the closings, Mr. Mills?

A The closing attorney, the buyer, the seller and their real estate agents.

Q Is it, or is it not a common practice for [6] real estate brokers or agents to be present at closings, in your experience?

A In my experience, I would say that is the usual situation.

Q Can you give a rough estimate of the volume of insurance policies that your company has issued for say

1975, talking about now in terms of the total value of property insured?

A 1975, it would be approximately two hundred million.

MR. VAUDRY:

You are talking about Louisiana properties?

THE WITNESS:

I am talking about Orleans and Jefferson. Generally, let me correct that, generally the nine river parishes as we call them, Orleans, Jefferson, St. Bernard, St. Tammany, Plaquemines, St. John — I missed a couple.

EXAMINATION BY MS. SAIK:

Q Can that be characterized as the Greater New Orleans Area, plus a little more?

A Yes, the metro plus.

[7] Q Is that figure you just gave comparable for the years say from 1971 through 1975, give or take a little?

A I honestly don't have the figures handy that far back. 1974 would be a considerably higher figure, because of one policy that we wrote for two hundred and seventy-five million dollars. So, that would start the picture.

Q Was that residential?

A No, I am sorry —

Q What publications are you aware of that are available on real estate and real estate transactions? I am speaking now of Orleans and Jefferson Parishes and the Greater New Orleans Area.

A There is a daily record newspaper which lists the transactions, the Sunday newspaper, the Times Picayune, which lists the transactions, and, then, there is a company called Deedfax, D-E-E-D-F-A-X, which publishes these records, arranged in streets sequence and subdivision sequence. Up until a couple of years ago, we published a [8] summary document.

Q What was the name of that document?

A Ours was called Comptran, C-O-M-P-T-R-A-N, for computerized real estate transfers.

Q What information did that contain, Sir?

A We published it monthly, first arranged by street, and it showed for a particular street the transactions, the municipal number, the district square and lot, the purchaser, entry number, type of transaction and the dollar amount of the sale.

Q Has your company ever published any document statistics concerning the volume of mortgage activity in the Greater New Orleans Area?

A For about three years we published two records, one called Mortgage Report, which consisted of a summary page of the major lenders in the metro area, the number of loans and dollar volume of the loans, and on separate pages, the individual loan, the borrower, the interest rate, the term, the property, and possibly some other information.

[9] Q You may have stated this already, Mr. Mills, but what period is that you are speaking of that these were published?

A Approximately August of '71 through July of '74.

Q Are any of those publications presently avail-

able? I am speaking of the one published in those years, are they presently available, at this time?

A Perhaps six or eight issues.

Q Do you have any in your possession?

A I had this cover sheet from the months that I had, which simply lists — it is a summary that I mentioned of what happened in the particular month. The first page, for example, is the month of July of '74, and it shows the total loans, and it breaks it down by home-
stead, individual and mortgage companies.

Now, I am sure these are available in various locations. We had a rather extensive customer list, obviously not extensive enough, or we would be still publishing.

Q This was filed in connection with your company [10] offering a —

A To anybody who had \$25.00 a month.

Q Who were your customers?

A Generally the lending institutions and developers. Actually, it was a very good publication, and it did give the details. These papers are only the summaries. There are many people who would like to see it reinstituted.

Q I would like to mark this for identification as Mills No. 1.

Mr. Mills, let's get back into this document here a minute. You have here on the left hand column, the name of the lender, and then, the column entitled the summary of mortgage activity and FHA and VA and conventional and the total, all loans, and where was this information obtained?

A From the records that went into my title plan for that month, for every deed that IBM card is punched. For every mortgage an IBM card is punched. I used to create an index for my title work by arranging them. You can get a [11] document like that.

Q This document does not contain the geographical region which this mortgage activity is pertaining to, could you tell us?

A Orleans, Jefferson, St. Bernard and St. Tammany.

Q Mr. Mills, this particular page does not have a date on it. Could you look at it and perhaps tell us what that refers to?

A I really couldn't.

Q Do you have the original booklet of these particular ones?

A Yes, this is the first page of each one of the reports.

Q The rest of the reports, you stated, I believe, contained information on each particular lender?

A Yes, the details of it.

Q You stated that you often performed closings, real estate closings, and what type of closing forms, if any, do you use?

A Are you talking about the deed or the mortgage or the closing statement?

[12] Q The closing statement.

A The closing statement is a national standard, HUD statement, that was, came out along with the Real Estate Settlement Procedures Act of 1974.

Q The Real Estate Settlement Procedures Act, in

other words, it sets out the requirements for what must go on to a closing statement?

A Correct. Now, in addition, some of the lenders require some extra items, but the basic statement is nation wide.

Q Basically, what information is available on those closing statements?

A Of course, you have a statement for the seller and a statement for the purchaser. It has a total amount of the transaction, the various expenditures that we have made on behalf of the purchaser or the seller, and the seller might pay discount points, the cost of the certificate, the vendor's closing fee. The purchaser would be paying for a wide range of items, for example, credit report, surveys, title insurance —

[13] Q Is the real estate commission shown on those forms?

A The real estate commission is shown on those forms.

Q From whom do you determine what a real estate commission is, does a buyer or seller tell you or the real estate agent —

MR. VAUDRY:

Are you referring to —

MS. SAIK:

I am referring to the question on the closing statement that tells —

MR. VAUDRY:

In the instance where a commission is paid?

THE WITNESS:

Would you mind repeating the question?

EXAMINATION BY MS. SAIK:

Q Say we are at a closing, and you have got the closing statement prepared. From whom do you determine, assuming there was a commission paid, from whom did you determine what commission was paid?

MR. BARBERA:

[14] You mean how much is the amount of the commission?

MS. SAIK:

Right, actually.

MR. BARBERA:

How do you know what is the amount of the commission so you can put it on the closing statement?

MS. SAIK:

Yes.

THE WITNESS:

I am embarrassed to say, I don't know the answer on that.

(Off the record)

THE WITNESS:

My answer would be my opinion, that you would look at the —

MS. SAIK:

That is all right.

EXAMINATION BY MS. SAIK:

Q Isn't it a fact, Mr. Mills, that on occasions, in most instances, the rate of real estate commission is determined from the purchase agreement?

A Yes.

[15] Q Getting to the title insurance service you offer, Sir, how is the premium on these insurance policies collected, generally, in most instances?

A Generally —

Q What I am getting at, really, who does the money come from, who does it go to?

A The money comes generally from the mortgage company on behalf of the borrower. We collect the total fee, and then, then monthly I submit the premium to the home office of our underwriter, Lawyer's Title.

Q Which is located in Virginia?

A Richmond, Virginia.

Q Have you ever contacted any brokers or realtors in Orleans and Jefferson in connection with the services you provide in terms of giving information, national data concerning how title insurance works?

A Over the years, I have probably spoken to most real estate offices, trying to promote the use of title insurance.

Q Do you have available any brochures or pamphlets describing your services?

[16] A I would have fifteen or twenty different items.

Q Have those been distributed to realtors or brokers in Orleans and Jefferson Parishes?

A I would say the majority of the real estate branch offices.

Q What industrial organizations does your company belong to?

A The American Land Title Association, the Louisiana Land Title Association, the Mortgage Bankers Association, the FH Home Builders Association.

Q Are these all national organizations?

A They have both, generally both a state or local operation and a national.

Q To your knowledge, Sir, do any realtors or brokers belong to any of these associations?

A I really don't know. I am sorry.

Q How many title insurance companies service the Orleans and Jefferson Parish area, Mr. Mills?

A There are approximately twenty-seven underwriting companies. The total number of agents in this area, I [17] honestly don't know the total.

Q Do you know whether or not these companies are headquartered in Louisiana?

A To my knowledge, there has only been one company that is headquartered in Louisiana, and I don't believe they are operating at the moment.

Q Is it your testimony, Sir, there are approximate-

ly twenty-five underwriting companies who provide title insurance services, and these would be companies located out of Louisiana?

A That is correct.

Q Does your title insurance company do business with any out of state companies in connection with providing real estate insurance?

A I will have to get you to repeat that one.

Q Does your company do business, or has it written any title insurance policies for companies that are headquartered out of Louisiana or out of the state?

A You mean Lawyer's Title of Louisiana?

MR. VAUDRY:

You are restricting your question [18] to residential?

MS. SAIK:

Generally, and if we can, if you could state yes or no, and if the answer is yes, please designate whether or not it is commercial or residential.

THE WITNESS:

Well, the answer is yes, and the second answer would be both.

EXAMINATION BY MS. SAIK:

Q What types of financial organizations use the title insurance service of your company?

A All FHA/VA loans. In fact, most loans that are insured or have anything to do with government agencies would be covered by title insurance. Generally, a

mortgage company transaction would be covered by title insurance.

Q Mr. Mills, have you ever been approached by any organizations composed of real estate agents interested in obtaining information about your services in terms of having you come address a group of realtors or brokers?

[19] A Most of the time would be my contacting them.

MS. SAIK:

I think that is all I have, Mr. Mills. These gentlemen may have some questions.

(Off the record)

EXAMINATION BY MR. VAUDRY:

Q Mr. Mills, in your testimony given earlier, you indicated that, and I believe you were giving a best guess, that in 1975, the value of the property in the nine river parish area that you have contacted with the value of the property issued through your agency was roughly two hundred million dollars, is that a fair statement of what you said?

A That is correct.

Q Now, does that figure relate both to commercial and residential properties?

A That would be both.

Q Do you have a breakdown as to what is — and by residential, I mean one to four family dwellings.

A I can not break it down, at this time.

Q Also, is that two hundred million dollar [20] figure the actual value of the pieces of real estate as opposed to the amount of insurance issued in 1975?

A Generally the answer would be both.

Q Well, you don't insure in a mortgagee's policy, for example, you don't write the insurance for the full value of the property, necessarily?

A No, in that case, it would be somewhat higher.

Q The value would be higher than the insurance?

A Right.

Q What is the two hundred million dollar figure, the value of the property or the insurance?

A It would be a mixture. I compile it based on what my approximate service cost is for a million dollars worth of title insurance.

Q This is based on your expenses?

A No, based on my premium, and I know approximately what my premium was, and I simply multiply that times the one million to come up with that. If I gave you figures of the premium, you could determine my gross insurance, [21] take for 1975.

Q Except that, isn't it a fact that that is a sliding scale?

A I have tested this average figure typically, and in the past, it has cost one per cent for a \$50,000.00 policy, whether it was mortgage or owner — if you take an average figure of approximately two fifty-five, it gives you a pretty good scale for what my business average is, the premium.

Q So, this is based upon the calculations of the input at, as you said, and not based on the actual data of going back and looking through?

A Yes.

EXAMINATION BY MS. SAIK:

Q How long have you been in the title insurance business, Mr. Mills?

A Ten and a half years, long years.

MS. SAIK:

Thank you very much, Mr. Mills. You have been very helpful.

* * * *

[460] UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Mar. 29, 1977

Deposition of MEAHER P. TURNER, taken in the office of Messrs. Nelson, Nelson & Lombard, Suite 1100, 344 Camp Street, New Orleans, Louisiana, on Monday, January 3, 1977.

APPEARANCES: (Omitted)

* * * *

[4] MR. NELSON:

This is the discovery deposition, and we are starting at 2:45 P.M., and one or more lawyers have not shown up, and there is no objection on the part of anybody present to start.

EXAMINATION BY MS. SAIK:

Q Mr. Turner, you were asked to bring with you today any documents that you might have describing the services and programs of the Department of Housing and Urban Development, in connection with residential real property.

Could you explain what documents you brought and give a brief description of each?

A All right, I have here the programs that are administered by HUD, all programs I have here, single dwelling programs, multi family programs and community block programs, and this is as of December 1976. So, it is pretty current. It gives a brief summary of each of the programs. It doesn't go into any great details of any one program. It does give a synopsis of [5] each program.

Q I am going to mark this for identification, Turner No. 1.

A I also have this exhibit here called the Fact Sheet, and it is on the 203 (b) Home Mortgage Insurance Program. Section 203 (b) of the National Housing Act provides a program of mortgage insurance to assist home buyers in the purchase of new and existing one to four family dwellings. It is the basic and most commonly used HUD/FHA program. Properties must meet all applicable standards of HUD/FHA's Minimum Property Standards, but there are no special qualifications for borrowers.

Q I will mark this for identification as Turner No. 2.

A That speaks of the 221 (d) (2), as well as the 203 (b) program.

I have here a handbook on the original 235 (i) program, as it was originally. There have been many changes in the new program. The new program was re-activated last year, in January of '76. [6] This is the original program, and I have here a little dissertation on the revised program as it is now.

Q On the 235 (i)?

A Yes.

Q I will mark these for identification as Turner No. 3.

A That goes with this. (Indicating)

Q And also Turner No. 3A.

A I also brought with me the FHA Home Regulations for home mortgage insurance. If there is any need for research in the regulations, we have the resources here to go into specific questions.

Q Would you state your full name for the record, please?

A Meaher Patrick Turner.

Q By whom are you presently employed, Mr. Turner?

A The Department of Housing and Urban Development, the New Orleans area office.

Q What is that address, Sir?

A 1001 Howard Avenue, New Orleans, 70113.

Q What is your job position with the Department of Housing and Urban Development?

[7] A I am a deputy director for the Housing Department on mortgage credit.

A In that position, Sir, what are your job duties?

A Supervisory capacity with a technical under-

writing branch, the cost branch, the evaluation branch, architectural branch and mortgage credit branch.

Q What is the geographic jurisdiction of the HUD office in New Orleans?

A Roughly the southern half of Louisiana, from the Mississippi border to the Texas border, if you draw a straight line across the Florida Parishes to the Texas border.

Q Does that jurisdiction include Orleans and Jefferson Parishes?

A Yes, it does.

Q Are you familiar with the programs available for HUD/FHA home insurance of residential real property?

A Yes.

Q Could you identify the HUD/FHA programs that finance or insure one to four family residential units in Orleans and [8] Jefferson Parishes?

A I can identify the insurance programs. We have no direct loans for home ownership.

Q Would you just basically explain what you mean by insurance program?

A We will insure loans on real estate on single family to four family units, and we will insure the lenders against loss in the event of a loss.

Q In connection with that purpose, could you identify, by name, the programs that are available for this purpose?

A Yes, 203 (b), Section 203 (b) of the National Housing Act, the basic program for which all other home ownership programs are a take off of, and

basically, they consist of a maximum loan of \$45,000.00 on a single family residence, and I have the loan amounts here. I will refer to them — \$45,000.00 on a single family home.

Q You are referring, Sir, to Turner No. 2?

A Yes, \$48,750.00 for a two family or duplex, a triplex or three family home, \$48,750.00, and a four plex or four [9] family home, \$56,000.00. The maximum term is thirty years. And, of course, we make available to the buyers a relatively low down payment than they would ordinarily get if they went to a conventional source.

Q In other words, a home buyer might obtain more favorable financing from FHA as opposed to conventional financing?

A Yes.

Q In what respect?

A With respect to interest rate and mortgage term, possibly. There are some lenders that lend on a thirty year basis, but not all conventional sources do.

Q In addition to the program that you just identified, the 203 (b), could you name any other FHA or HUD programs that insure residential real property in Orleans and Jefferson?

A The 221 (d) (2) program, similar to the 203 (b) program. It is tailored for the low to moderate income families and has a mortgage limitation lower than the \$45,000.00, and it has a down [10] payment requirement that is somewhat less than the 203 (b).

Q Mr. Turner, you brought a document which has been marked for identification as Turner No. 3, en-

titled Section 235 (i). Could you address yourself to the procedures of that program?

A It has the same mortgage limitations as the 221 (d) (2) program. The difference is that the 235 (i) program is a subsidized program. The loans are made at the market interest rate by the lender, and the government subsidizes the interest rate to a point where the borrowers pay on the equivalent of a five per cent mortgage. This becomes a below market rate interest loan in favor of the purchaser, and allows the lower income families to buy into home ownership they wouldn't ordinarily be qualified to do under the regular down payment requirements and monthly mortgage payments at the market rate interest.

Q Are the monies in this subsidized program paid directly to the buyer, namely the [11] 235?

A No, it is not.

Q Who receives this money?

A The lender, the mortgagee.

Now, the new program is — the 235 program was re-activated in January. At the moment, there are no new loans under this program. It is inactive. The program has been inactive since January. There are no new 235 mortgage transactions.

Q When was this program in full force and effect, the 235 (i)?

A I think it starts in '69, and a moratorium was declared in January of 1970. I think '70, yes.

Q After January of 1970, there were no new insuring under this particular program?

A There was no new cases processed. There was

some secretary held properties that were resold with benefits.

Q Other than those instances, from January of '70 to what date was this program inactive?

A Up till, well, January '70 to January of last [12] year, '76.

Now, there were loans made directly by secretary. There were allocations made on the real estate of property commissions or secretary held properties. These properties were defaulted and resold by the secretary with benefits.

Q Are there any other mortgage programs?

A Yes, the Section 222 program, in service servicemen, servicemen in service, a program whereby a person in the service, a sailor, soldier, marine, whatever, can get a loan through the 222 program, even though he may be only temporarily stationed, you know, within the confines of the city where he is purchasing. He need get from his commanding officer a certificate of need, which says, in effect, that he has need for the house at his new location. And, with this, we will insure the loan. We do not ordinarily accept the risk under the 203 (b) for servicemen, because of their employment that gets them around the country, [13] transferring here and there.

Q Mr. Turner, does a home buyer, who obtains the mortgage, pay any sort of premium for the benefit of FHA/HUD insurance?

A Yes. The home buyer pays each month, one-twelfth of the annual premium. The premium itself is one-half of one per cent of the mortgage amount.

Q To whom does the home buyer pay this premium?

A When he makes his debt service payment to the lender, it is included in the debt service payment to the lender.

Q How does the Department of Housing and Urban Development receive these monies?

A That is a transaction between the lender and the HUD Washington, central office, in Washington. The bookkeeping there is done at the central office level. We don't get into that locally.

Q In other words, the lender authorized the amount representing the insurance premium to the Washington office of HUD?

A That is correct.

Q Is this done monthly?

[14] A Yes.

Q Is this premium a condition of all the programs you described previously?

A All except the 222 program, in service loan. The premium is waived until such time as the in service person is discharged. At that time, if he still retains the home, he starts paying the mortgage insurance premium.

Q What happens to the monies once they are received by the HUD office in Washington?

A Well, it is kept in a reserve account for the contingencies that occur when a mortgage is defaulted. The lender is paid off from the fund. HUD takes the home back and repairs it and puts it back on the market for resale.

Q Who is eligible for HUD/FHA financing, Mr. Turner?

A Anybody that would qualify on income and ability to go to a loan closing. It need not be a citizen. They would have to qualify on certain characteristics and income.

[15] Q Suppose a home buyer wants to secure FHA/HUD financing, what process would that home buyer go through in order to secure this?

A I think your question assumes there is a house for sale, either by the owner or realtor, acting for the owner, and he would go through either one, as the case might warrant, and if it turns out it was to be an FHA transaction, the home owner or realtor would go to the mortgage lender, approved HUD mortgage lender, approved HUD/FHA mortgage lender. The mortgage lender would order an appraisal. We are assuming, again, that this is an existing house that is offered for sale. They would pay a \$50.00 fee for appraisal.

Q The buyer would pay this \$50.00 fee for appraisal?

A Eventually he would pay, yse.

Q The mortgage lender must contact you, the HUD office?

A The mortgage lender files an FHA 2800 form for appraisal and conditional commitment.

Q Can a buyer go directly to HUD to obtain the [16] necessary arrangements?

A No, he must go through an FHA approved mortgagee.

Q Is it necessary to be approved by HUD in order for a mortgagee to request financing for a buyer?

A Right, yes.

The list of these mortgagees can be obtained from the local office.

Q Do realtors or brokers ever contact the Department of Housing and Urban Development office in order to secure a list of the approved mortgagees?

A It is possible, I suppose. We have, in the past, received such requests, and consider it forthcoming, and we will mail them one upon request, a list of the approved mortgagees.

Q You do have a list available for this purpose?

A Yes, to the general public or whoever is interested in knowing who the approved lenders are.

Q I believe we reached the point where the buyer goes to the lender in order to [17] secure HUD financing. At this point, what occurs then?

A We are obligated within five days to make an appraisal and issue what we call a conditional commitment. Now, the conditional commitment will give the appraised value of the house and the amount of the money we will insure on a qualified applicant, and also obtain possibly other conditions, maybe repair conditions, some repairs that may be required. The commitment will be predicated on these repairs being made prior to endorsement by HUD for insurance. Having gotten the appraisal and loan amount, we will insure. The next step would be the borrower's application, again, through the mortgage company.

Q What documents must be submitted by the financing company or mortgage company to HUD in order to obtain insurance?

A All right, there will always be a copy of a purchase agreement. Now, if the conditional commitment was issued prior [18] to the date on the purchase agreement, the purchase agreement need not contain amendatory language. If the purchase agreement was signed prior to the issuance of a conditional commitment, then, the purchase agreement must include the amendatory language, which says, in fact, that the FHA appraisal does not come up to a certain dollar amount. Then, the purchaser has the option of backing out of the transaction without any penalty.

Q What other documents other than the purchase agreement are submitted?

A The mortgagee will order a credit report on the borrower. He would have gone to the various sources and gotten various figures of the employment on the borrower and go to all the depositories and verify funds on deposit and determine whether or not the data given in the application was factual. And, if the buyer has enough money to go to the loan closing, and, of course, the application itself which contains all pertinent [19] information as to the amount requested and the mortgage monthly payments, the principal and interest payments, the mortgage insurance premium amount, the estimated one-twelfth of the annual taxes, the estimated one-twelfth of the hazard insurance. There is also an amount put in there for estimate for maintenance over the years, based, again, on one-twelfth of the annual estimate, and also, the utility estimate, the utility bill estimate. It will show then the total housing expenses to include all of these items, and it

will also show the monthly recurring charges that this borrower has now recurring. It is considered to be a recurring charge, where the monthly obligation is going to be longer than a twelve month period. For instance, if he has a car payment to make, it is going to exceed twelve months. He must show that as a reoccurring charge, and it is considered when they make an analysis as effects of [20] income being adequate to support the total housing expenses, plus the living expenses. So, any obligations that the borrower has that is going to run in excess of twelve months must be considered as recurrent, his life insurance premium and car payment, if they run in excess of twelve months, and all department store accounts that run over twelve months. In addition to that, it shows that he is employed by such and such a company, that he has x number of dollars, a financial statement, included in there as assets in this bank and that bank, as well as liability. It is a complete wrap up of this particular person's situation, financial situation, and, of course, he will sign that under penalty.

Q Will HUD give an appraisal without a buyer having been located?

A Yes, right. Again, that is a \$50.00 fee for an appraisal and conditional commitment. They need not be a buyer involved at the time the request is made for an [21] appraisal.

Q Which transaction would be most common, where HUD gives an appraisal to the seller, or where a buyer has already been located or is interested —

A The usual procedure is to get the conditional commitment beforehand.

Q Before a buyer is located?

A Before we know about a borrower. They may or may not have a borrower in mind, but ninety-nine out of a hundred, they will come in for a conditional, regardless of whether they have a buyer or not. I am speaking in terms of issuing a conditional commitment prior to issuing a firm commitment for the buyer, as opposed to doing it simultaneously. We very rarely get a joint application for buyer and — the sequence is to get the conditional commitment and come in with the buyer. The conditional commitment is good for six months. It permits you to get the house on the market, then get a buyer. You have a six month time period to get [22] a buyer. That is an existing house.

In the case of a proposed construction, who would have gotten the house plans and specifications along with the conditional commitment and cost of plans and arrived at a value prior to completion.

Q Mr. Turner, for what purpose would a seller obtain a FHA appraisal?

A For what purpose would he obtain a FHA appraisal? Well, I guess for obvious purposes of selling a house to a client. It is a financing resource, I suppose, that is available only to certain borrowers that may not qualify under the conventional type of mortgage procedures. The FHA would offer a lesser down payment, the program would, and it would possibly afford the borrower a longer term, thereby, making his monthly payments lesser than would be on a twenty-five year term that a conventional lender would insist on. It is just another way of selling a house, I suppose, and you

need not follow through on the conditional [23] commitment. You may just be shopping for an appraisal and may eventually sell it through a conventional lender.

Q Does HUD require title insurance as a condition for selling a property?

A Yes.

Q Would this be true under all the programs you mentioned?

A Yes.

Q Do you have any knowledge of how the title insurance is obtained?

A No, except a qualified title company. I don't know anything about that. I would have to do some research. But, it will come from a title company, naturally.

Q If a person defaults on their mortgage obligations, where HUD has insured the mortgage, what obligation does HUD have at that point?

A Well, we won't consider any default until it becomes three months delinquent, three consecutive months that the borrower misses a payment. At that time, the mortgagee has a option of [24] notifying HUD of the default, and we then can negotiate as to whether or not we will take a deed in lieu of foreclosure, or whether or not we will go to foreclosure. We try to work out an agreement. It is my understanding that HUD will try to work out an agreement with the borrower. Before they do anything drastic, they will take a deed rather than go to a foreclosure. If more information is needed on that, I suggest you call the Housing Management Division at HUD.

Q Who is in charge of that division, Sir?

A Mr. Herman Duncan.

Q If a buyer does default on their mortgage, will HUD then pick up an obligation on that mortgage to pay the remainder of the obligation to the original lender?

A Yes, that is the purpose of the mortgage insurance premium.

Q Are those monies paid from the New Orleans office?

A No, that is handled directly with the HUD [25] Washington office.

Q So, the monies will be paid from Washington to the original lender?

A Right.

Q Are HUD properties ever sold or resold in the housing market following a repossession?

A Yes, at the repossession, yes, HUD will take it over and do any necessary repairs that have to be done and put it back on the market. They will advertise it through, again, an approved broker. They have a list of people who have qualified themselves as brokers to handle the secretary held properties. Again, you can get a list from Mr. Duncan.

Q To your knowledge, has the HUD Area Office ever sold properties within Orleans and Jefferson Parishes through the approved real estate brokers that you just mentioned?

A Yes.

Q Is that common practice?

A Yes.

[26] Q Are the brokers who handle those sales paid a commission?

A Yes.

Q Assuming the property is sold?

A Yes, they are paid a commission.

Q To your knowledge, Mr. Turner, are the mortgages which your department insures ever sold to other financial institutions either in Louisiana or outside of Louisiana?

A If I understand your question, yes. For instance, many, many of the mortgage companies will handle their paper through the Gennie Mae Agency.

Q Could you explain what Gennie Mae is?

A The Government National Mortgage Association. At times, congress will appropriate below market interest rate money to buy those mortgages, and, of course, the mortgagees or local mortgagees will take advantage of that and offer their clients a reduced interest rate through the Gennie Mae outlet. And, whereas they take the application here and submit [27] it to us, they will then market the loan to Gennie Mae, or it could be an insurance company or just anybody who wanted to warehouse the loan. This is where you have the discount points come into effect, the people who warehouse these loans, because they can invest their money elsewhere at a higher interest rate. They will demand a discount and not take the loan at the partial discount, maybe two to three points. Depending on the money market, in general, the discount points fluctuate.

Q Is HUD notified by the original lender if the mortgage is then resold?

A The local office, no. We never an idea of that.

Q Who would be notified, if you know?

A Central office would have to know eventually who was servicing the loan.

Q By central office, you mean —

A Washington.

MS. SAIK:

Mr. Turner, those are all the [28] questions I have. The other counsel may have some questions to ask you.

(Off the record)

MR. MC CALL:

Mr. Turner, it is our considered opinion that you have been so informative on this matter that we have concluded that we will waive cross examination. Thank you very much.

* * *

(Exhibits Omitted)

[461] UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Mar. 29, 1977

Deposition of MAX DERBES, JR., taken in the office
of Messrs. Nelson, Nelson & Lombard, Suite 1100, 334

Camp Street, New Orleans, Louisiana, on Wednesday,
January 12, 1977.

APPEARANCES: (Omitted)

EXAMINATION BY MR. NELSON:

* * *

[12] Q And who is eligible to be a member of Realat-
tron?

A As far as I know, everybody is eligible.

Q Everybody in the real estate business?

A Yes, sir, they have some who aren't in the real es-
tate business.

Q Are you a member of Realatron?

A No, sir.

Q Is your company a member?

A No, sir.

Q To your knowledge, is anybody on the Board a
member of Realatron?

A Yes, sir. I don't know precisely which ones that
are members.

Q How would you know they are members of Real-
atron on the Board, how would that information have
come to you?

A Well, they keep the terminal in the Board office,
and their members have told me they are members.

Q What terminals are kept in the Board office?

A Well, they have a computer terminal wherein the
information comes out on Realatron and goes in.

[13] Q Who pays for the upkeep of the terminal?

A The Realatron group.

Q Does the Board participate in any way in the upkeep of it?

A Well, not currently, no, sir.

Q Did it ever?

A Yes, sir. I think that we assisted years ago, but I can't recall how many, in getting it going, because it was a loss at first.

Q Is it making money now?

A I think it is breaking even, I'm not sure. I don't know anything about it.

Q For what reason would the terminal for Realatron be in the Board office?

A Well, we consider this a good thing for realtors.

Q And through Realatron, realtors can determine the availability of homes in states other than the state of Louisiana, is that correct?

A No, sir, I don't believe they can. You see, it works on a geographical pattern, and if you belong to New Orleans, you get the New Orleans information. If you [14] belong to Jefferson, you get the Jefferson information.

Q What information do you get from Realatron that is located in Orleans Parish, in the Board office?

A You get those properties which the members of Realatron have listed, no others.

Q Does the Board keep — who keeps, who is in charge of the taking care of this terminal and operating the terminal?

A The Realatron group.

Q And this is done in the Board office?

A Yes, sir.

Q Is there anyone there that collects the information from the terminal?

A They have a part time gal, I believe, I don't know what their status is now. They have over the years had a part time gal there.

Q Is she still there?

A I think so.

Q It is your testimony that the Board has nothing to do with the terminal, is that your testimony?

A That is correct.

[15] Q Does the Board ever use the information that is gotten off of the terminal?

A No, sir.

Q Have you ever seen the information that comes off the terminal or are you aware of what comes off?

A Yes, sir.

Q Have you ever heard of a quarterly statistical report?

A Yes, sir.

Q Is that one of the publications produced as information from Realatron?

A I think so.

Q You have seen the quarterly statistical report here in New Orleans?

A Yes, sir. I saw it on the table one time. I didn't study it.

Q When was the last time you saw one of them?

A Maybe six months ago.

Q They do have them for this area?

A Yes, sir.

Q And it is published from information that comes off of the terminal in the Board office?

A Yes, sir.

[16] Q On the quarterly statistical report, is it not a fact that they have a number of homes sold over a particular period of time?

A I don't recall that.

Q Do you recall whether the statistical report has a breakdown in this community in terms of the seasons?

A Well, they keep their data on a season basis, all computer services do.

Q Can you tell me any information at all that is included in the report?

A They have the homes that are listed for sale by the members of Realatron.

Q What else?

A Well, I think they report the prices, after they are sold. I am not even sure of that.

Q Do you know any companies that are members of Realatron?

A Dale Tynes, and I think all the major companies are. The only other one I can think of is Latter and Blum and Dale Tynes are the only two I know are on it.

[17] Q Am I to understand that you, as President of the Board, the information secured from Realatron is of no value to you?

A No, sir. I don't use it. I don't subscribe to it or have anything to do with it.

Q The Board, do they refer to it during the course of their meetings, the Board of Directors?

A No, sir, not to the service.

Q I am not talking about subscribing to the service, do they use the quarterly statistical report?

A No, sir.

Q If you would want a copy of the last four issues of the quarterly statistical report, where would you go to get one, Mr. Derbes?

A I believe you would have to go to a member of Realatron to get one.

Q Does the Board receive any rent for allowing this terminal to be at its address?

A I don't think, I don't believe we do. I don't know.

Q Who would know whether the Board is receiving rent for that?

[18] A Our accountant.

Q Who is your accountant?

A Phillip Marchese. I really don't know.

Q Is the Board an affiliate of any national boards of realtors?

A Yes, sir. I take that back — I really don't know the relationship between the Louisiana Realtors Association and the National Association of Realtors and the Real Estate Board of New Orleans. We usually belong to all of these groups, and you have to belong to all these groups to belong to one. The direct affiliation between the New Orleans Board and the State Association or the National Association, I really don't know the legal connection. The Real Estate Board of New Orleans is a separate entity under the law, as far as I know.

Q Do you know the practical effects of the relationship?

A Practically, if you have to belong to all three of them, presumably, you have to abide by the rules and ethics of all [19] three of them.

Q Would it be reasonable to conclude that the Board abides by the rules and regulations of the National Board of Realtors?

A I think so.

Q Where would I find a copy of the national rules and regulations that would apply to the Board?

A Presumably 155 East Superior Street, East Chicago, Illinois.

Q Would there be a copy in New Orleans?

A No, sir.

Q How would you know what rules and regulations affect your Board?

A Well, Sir, we have certain documents from them, suggested bylaws and that sort of thing.

Q What do you call those documents?

A Suggested bylaws.

MR. NELSON:

I would like, if you have a copy, I would like to see them, Mr. Ballin, in your office, the suggested bylaws or whatever rules and regulations promulgated by the National Board of [20] Realtors that are in the possession of Mr. Derbes or one of the employees of the Board.

MR. BALLIN:

If you wish to subpoena them, we would deal with it.

MR. NELSON:

I would ask if they would be voluntarily given under the court rules.

MR. BALLIN:

No, Sir. They are not pertinent to the issues at this stage.

MR. NELSON:

You mean the control of a local organization by a national organization does not pertain to interstate commerce, Mr. Ballin?

MR. BALLIN:

Not in this connection.

EXAMINATION BY MR. NELSON:

Q Are there any publications that come from the National Board of Realtors that are received by the Board?

A I think they have a weekly called Headlines.

Q Have you ever seen a copy of it, Mr. Derbes?

[21] A Yes, I think all realtors get a copy.

Q Are you in doubt, you said you think, are you in doubt about the publication?

A I don't know of my own knowledge that they receive it. I know the National Associations says that they send all their publications to the members of the Board. I am trying to give you what I know of my own knowledge.

Q We can conclude, therefore, as far as you are concerned, it is more likely than not that the National Board issues a weekly publication?

A Yes, sir.

Q It is more likely than not that the copies of this goes to the Board?

A Yes, sir.

Q Is this kept by the Board?

A Yes, sir, as far as I know.

MR. NELSON:

If I would like to see last year's copy of these, I would have to subpoena those?

MR. BALLIN:

Yes, sir.

[22] EXAMINATION BY MR. NELSON:

Q In fact, I do want to see the last four years.

A I don't know if they have them that long ago.

Q However long they have them, I will take them.

Other than that National Board of Realtors and Louisiana Board of Realtors, is the Board a member of any other state or national organization?

A I didn't say they were a member of the first two.

Q What would you call it affiliates or what?

A I would say affiliates.

Q Well, let's put it that way. I will ask the question, substituting the word affiliate for membership.

A An affiliate with the National Association for Realtors would have some affiliation with all of the

associates and institutes of the National Association of Realtors. Other than that, I know of none other.

Q Does the Board pay dues to the National Association of Realtors?

A Well, the individual members pay dues, and [23] at the time they pay their dues, I believe that they have one collection agency for all three of the groups, then, I think on a local basis, and you contributed, but your invoice is, you know, shows clearly what the dues for each of the groups are.

Q What is the name of the organization that collects the dues?

A Real Estate Board of New Orleans, I think.

Q Do you collect or don't you collect, do you believe they collect it?

MR. BALLIN:

Just a moment, Mr. Nelson. The witness has the right to either state that he has positive knowledge or that he believes. I don't think you have the right to quarrel with the witness, if he is not sure, and he makes a statement that he believes.

MR. NELSON:

All right.

MR. BALLIN:

If he believes, he believes; if he knows, he knows.

[24] THE WITNESS:

Let me just explain. I excluded from there the possi-

bility that somebody pays their dues directly. So, I am going to be technically correct to you.

EXAMINATION BY MR. NELSON:

Q I understand there are no doubts that the Board collects money from some realtors and forwards that to the National Organization?

A That was not your question. Your question was, do all of them do, and I am reasonably certain that they collect the dues for most of the realtors, for state and national associations.

Q All right, now, what is the National Board of Realtors, what is it?

A It is an independent entity, which is incorporated, I believe, in the state of Illinois, and it is a professional trade organization, an organization of individual members, called realtors, throughout the whole United States. They have a copyright on the word realtor.

[25] Q Do they have a particular insignia?

A Yes, Sir.

Q Can any realtor use the insignia?

A Yes, Sir.

Q Do you have to be a member of the National Board of Realtors to use the insignia?

A I would assume so, since it is copyrighted.

Q What services are provided by the National Board of Realtors?

A The usual services of most trade organizations, education, invention, publication, and that sort of thing.

Q What type of educational programs?

A Educational materials are published by the Board. If you have three hours, I can give them to you in about three hours.

* * * *

[30] MR. NELSON:

Thank you. Can you answer the question?

THE WITNESS:

Can I answer it, subject to your objection?

MR. NELSON:

We are not bound by the rules of evidence. You might be right in court, but I do not intend to use this in an unreasonable way. I sincerely feel that is a relevant question.

THE WITNESS:

I can only answer you with regard as to what happened if you came to me — so — we don't belong to any of them, and we would try to find a reputable agent in the location where you wanted a home, and refer that person to you and wish you good luck, and take no responsibility for any action of this other party, nor receive any commission there from.

EXAMINATION BY MR. NELSON:

[31] Q Do you have in your office a list of real estate agents that reside out of the state of Louisiana?

A Yes, sir.

Q From where did you get that list?

A The one that I normally refer to is the National Marketing Institute list of members.

Q Would you refer to that list, if I came to you and wanted to buy a home in another state?

A Yes, sir.

Q So, you would go to the list, wouldn't you, Mr. Derbes, wouldn't you?

A Yes, sir, I would go to the list.

Q You got that list from a national organization, didn't you?

A Yes, sir. It is a member of the National Association of Realtors, it is an affiliate of the National Association of Realtors.

Q That is a relocation list, isn't it?

MR. BALLIN:

Just a moment — look — I am going to —

[32] MR. NELSON:

Strike the question.

EXAMINATION BY MR. NELSON:

Q What would be the purpose of you having a list of out of state realtors in your office?

A To endeavor to help my fellow man.

Q To buy a home outside of the state of Louisiana, if he so needs it?

A If he needed any kind of real estate services.

Q Included in that would be to buy him a home outside of the state of Louisiana, if he so needed it?

A Yes, sir.

Q That list comes to you from the National Marketing Institute?

A Yes, sir.

Q Do you pay dues to the National Marketing Institute?

A Yes, sir.

Q Are there yearly meetings of the National Marketing Institute?

A Yes, sir.

Q The National Marketing Institute is an affiliate of the National Association of [33] Realtors?

A Yes, Sir.

Q Do you know the national address of the National Marketing Institute?

A 155 East Superior Street, Chicago, Illinois.

Q Is that the same address as the National Association of Realtors?

A Yes, sir.

Q What is the purpose of the National Association of Realtors?

MR. BALLIN:

Object to that question, that calls for an opinion. He is not an officer of the National Association, and he is the wrong person to ask that question.

(Off the record)

EXAMINATION BY MR. NELSON:

Q Would we conclude from that, Mr. Derbes, that you do not know what services are rendered by the National Association of Realtors?

MR. BALLIN:

Don't answer that question. Jack, again, —

[34] MR. NELSON:

I am going to keep presenting it, Mr. Ballin, and as long as you tell him —

MR. BALLIN:

Don't ask questions, putting the answer in your question.

MR. NELSON:

We are discovering here, Mr. Ballin.

MR. BALLIN:

I know it is discovery, but you have to ask him questions and not put the answers in the questions.

MR. NELSON:

I am dealing with an educated man. I don't want to trick him. Your instruction to the man is not to answer, is that correct?

MR. BALLIN:

Yes, Sir.

EXAMINATION BY MR. NELSON:

Q Other than this one organization that you testified to, the National Marketing Institute, do you know the names of any other organizations that facilitate [35] relocation moves?

MR. PRICE:

Objection. That suggests something that is not in the record, and there is no testimony in here that the National Marketing Institute's purpose is to assist in relocation of home buyers anywhere, Jack. That is an unfair question.

MR. BALLIN:

Reword your question. Your aim is proper, but the question is improper. Reword that question.

MR. NELSON:

For your benefit, I will do it.

EXAMINATION BY MR. NELSON:

Q Mr. Derbes, you have a list of real estate agents in states outside of Louisiana, in your office, is that correct?

A Yes, Sir.

Q They are from every state, Sir?

A Yes, Sir.

Q Do you know everyone of them?

A All of the thousands of brokers and so forth?

Q Yes.

[36] A No, sir.

Q About how many are on that list that you have in your office?

A I don't know. It is probably over twenty thousand.

Q In your office?

A There is one book, but twenty thousand names.

Q That is published by the National Marketing Institute?

A Yes, sir.

MR. NELSON:

I would like to take a look at that book, at some time, just take a look at it.

MR. BALLIN:

The same thing holds.

MR. NELSON:

I want to see that book with the twenty thousand names.

MR. BALLIN:

We will not produce it voluntarily.

* * *

[45] MR. BALLIN:

I suggest that you read the last sentence, which —

MR. NELSON:

Wait, we are getting to it.

THE WITNESS:

I do now recall hundreds of houses that I know of my own knowledge were sold by the builders without the interposition of a real estate broker.

EXAMINATION BY MR. NELSON:

Q And a friend?

A Well, I can not recall any about friends or relatives or through attorneys, at the present time. As far as builders, I think a few hundred of them.

Q Would it be reasonable to conclude, Mr. Derbes, that taking the builders out and taking the relationships of friends out or relatives out or attorneys at law out, that the vast, vast majority of other sales are made by real estate brokers or persons licensed in order to collect a commission?

A I think that if I may word it, it is reasonable [46] that more than probably, except for builders, friends, relatives and attorneys, that probably the majority of houses are sold by licensed real estate agents, that is, realtors and non-realtors, licensed real estate agents.

Q Now, in seven, essentially the function of a Louisiana real estate broker consists of counseling the purchaser or seller of real estate in the state of Louisiana, you concede that is true, right?

A Yes, sir.

Q You would also concede that one of the functions of a real estate broker could be to assist a seller in establishing a price for property, isn't that correct?

A Yes, sir.

Q And counseling a purchaser, would you say that real estate agents who have a knowledge of the market, the money market, availability of money to buy the home?

[47] A Yes, sir.

Q Does the Board do anything or have published anything or take any action at all in connection with attempting to encourage real estate agents to acquire

information necessary in the — to acquire information relative to the money market?

A They encourage them to be professional and perform a service, and in that regard, I would say, yes.

Q Now, you have, assist a purchaser or seller in bringing about agreement to purchase and sell — is it not a fact that as a result of your experience, before an agreement to sell is signed, some effort has been made to determine whether or not the purchaser can obtain financing, some effort is made?

A Not in all cases.

Q Would you say in some cases?

A Yes, sir.

Q Would you say in the majority of cases?

A Repeat the question.

Q That before the agreement to sell is signed, that there has been some effort made to [48] determine whether or not a purchaser can obtain financing?

A Yes, sir. The qualifications of a buyer, that is what we call it.

Q What role does the agent play in so far as you observed in determining the qualifications of the buyer?

A Whether he has a good credit rating and so forth, in other words, before the agreement is signed, it is just a question of trying to fit the purchaser to the right house type of thing, so you say, how are you going to handle the house and that sort of thing.

Q The real estate agent would ask the purchaser that?

A Yes.

Q Is it not a fact, that the counseling goes on between a person and the real estate agent in connec-

tion with when he has the money for the right house?

A Yes, sir, that is covered above.

Q Is it not true, in that connection, in a practical matter, as what goes on in the market, is that the real estate [49] agents at all times assist prospective buyers in their efforts to secure money?

A Would you define assist?

Q Calling a mortgage company, referring a purchaser to a mortgage company.

A Yes, sir.

Q Is it not a fact that in the overwhelming majority of cases, the obtaining of financing is handled by a lending institution?

A Yes, sir.

Q Now, does a lending institution, and I am talking about a homestead right now, and I will define, give you my definition of an institution, and let's take one of the homesteads, does it require a copy of an agreement to sell before it will start the process that winds up with a closing?

A Typically, yes.

Q Who prepares the contract to purchase itself, who prepares it?

A The agent or salesman that is handling the transaction.

[50] Q And the real estate agent secures that information from the prospective purchaser, is that correct?

MR. BALLIN:

You say that information —

MR. NELSON:

The information that goes on the agreement to sell and buy.

THE WITNESS:

He finds out what the man wants to pay for the house, certainly, and that sort of information he puts on there.

EXAMINATION BY MR. NELSON:

Q Does the real estate agent have the responsibility to see that those agreements are signed?

A He doesn't make a commission unless the agreements are signed. In that regard, he encourages their signature.

* * * *

[54] THE WITNESS:

Surveys may be, if there is a recent survey. I don't know about any other documents that they normally request.

EXAMINATION BY MR. NELSON:

Q Is it not a fact that in this area, that real estate agents normally show up at closures?

(Off the record)

THE WITNESS:

Yes.

EXAMINATION BY MR. NELSON:

Q And isn't it a fact, generally, agents in Orleans and Jefferson do not earn their commissions until the act of sale has been passed?

MR. BALLIN:

Jack —

MR. NELSON:

Mr. Ballin, there are two ways to do this. One is discovery and I am not limited to relevant information, if it leads to other information. We could subpoena the twenty thousand or [55] two thousand and ask them that question. I am asking the President of this industry, or at least an organization that represents this industry whether, in his opinion, that salesmen in this area earn their commissions — if the commissions are not earned until the act of sale, and am I to understand — well — you can interpose your objection —

MR. PRICE:

I am going to interpose an objection, Jack, because that calls for a legal conclusion on the part of this witness, and the agreement to purchase, providing under which of these agreements are entered into, that the commission is earned upon the signing of the agreement. As a matter of practice, it could very well be that most brokers or most realtors would say they wouldn't attempt to get a commission unless the act was passed.

MR. NELSON:

We have testimony different to that, that the commission is earned at [56] the time of the passing of the act.

MR. PRICE:

That is the way they treat it, but the commission is earned at the time of signing.

MR. NELSON:

I want him to testify to that.

MR. BALLIN:

He is one instrument I will give you without subpoena.

MR. NELSON:

Let's see if he can answer the question.

THE WITNESS:

It depends upon the contract and the clauses in the contract, as to whether the commission is earned. Some commissions are earned at the act of sale, and some commissions are earned prior to the act of sale.

EXAMINATION BY MR. NELSON:

Q And residences, homes, in this area, do you have an opinion as to whether the vast majority of agreements to purchase and sell, whether you earned your commission [57] at the act of sale or at the time the agreement was signed?

A At the time the agreement is signed or the conditions therefore are admit. (sic)

Q Is that a fact?

A Well, certainly.

Q So, if the commissions are earned, therefore, you admit?

A Well, certainly.

Q In your experience in this area, is it not a fact a deposit is usually accepted when an agreement to purchase and sell are signed?

A Yes, sir.

Q Is it not a fact that this deposit is placed easily with the company in an escrow account?

A Yes, sir.

Q Isn't it a fact that the escrow account is kept pending the closure?

A Yes, sir.

Q Isn't it a fact that the financial arrangements and accounting is made at the closure?

A Yes, sir.

Q Isn't it a fact that the amount picked up and [58] kept in the escrow account is included in the accounting?

A Yes, sir, whether it is a cash sale or a mortgage transaction, any kind of transaction.

Q In your affidavit, you state that brokers earn commissions upon procuring a purchaser or seller and essentially complete that function at the time. When you use the word essentially completed the function, what does this mean, Mr. Derbes?

A They have done most of what they need to do in connection with the transaction.

Q I would like to ask you what has to be done after the most — does the most mean all that they have to do?

A In many cases, yes.

Q Well then, when you use the word essentially completed your function, what else is included in here?

A Well, they try to make sure everybody is performing the conditions of the contract. In other words, you want to make sure the thing goes along, so you [59] stay in touch.

Q And that is one of the roles the agent plays?

A Oh, yes.

Q In your experience, have you ever recommended a particular homestead to a prospective purchaser?

A Yes, sir.

Q This is not an unusual situation?

A I am a member of the Board of one of the homesteads.

Q What homestead?

A Continental.

Q How many homesteads are in this city?

A Thirty-five, I believe.

Q And homesteads in Jefferson?

A Well, I was including Jefferson in there. There may be four or five in Jefferson, additionally, I don't know.

Q In the last five years, have banks been a source of financing for residences in Orleans and Jefferson?

A Yes, sir.

Q I am not talking about new development, I am talking about old homes.

A Yes, sir.

[60] Q Any other institutions besides banks and homesteads?

A A lot of institutions are involved in home lending.

Q Approximately how many banks are involved in home lending in Jefferson and Orleans in the last four years?

A Just about all of them.

Q Approximately how many in Orleans and Jefferson?

A Twenty, twenty-five.

Q Approximately how many other institutions are involved in the lending of residential homes in Orleans and Jefferson in the last four years?

A I don't have any idea. I'm not trying to be evasive, but all of the mortgage type and banking outfits, all of the small loan boys, everybody gets involved in financing a house.

(Off the record)

EXAMINATION BY MR. NELSON:

Q Mr. Derbes, I show you a copy of an agreement to purchase or sell, and it says, "For exclusive use of realtors, Standard [61] Form or Real Estate Board of New Orleans, Inc.," and I will mark this for identification as Derbes No. 1. You are familiar with this document?

A Yes, sir.

Q Under the terms of this document, does an agent have the authority to obtain a loan for a purchaser?

A No, sir.

Q Would you please look at it, on line sixteen, it says, "Should purchaser, seller or agent be unable to obtain the loan stipulated above," they are talking about the — what agents are they talking about in line sixteen?

A The one that facilitated the transaction.

Q And the agent has the authority to obtain a loan under this agreement?

A No, sir. I don't interpret it that way.

Q Does an agent have an authority under this agreement to obtain a loan if the seller or purchaser can't?

A I don't interpret it that way. The purpose of the wording that was inputted into this agreement was if the purchaser acted [62] in bad faith, and it was obvious that he could get a loan, and I think that in jurisprudence there are cases, that it shows there were cases that a loan could be obtained for a purchaser, and that is why it is worded agent to obtain.

Q But, the agent has the authority under the agreement to obtain the loan?

A I don't interpret that. That would mean that the purchaser would have the obligation to accept the loan. I don't read it that way. I don't see anything in there that would require a person to do that.

Q Even those based on interest, area and amount as stipulated under this agreement?

A That is correct. If the conditions of the contract are met, and somebody defaults, i.e. the purchaser, he has certain penalties. If the agent were to get a loan, that was readily available to the purchaser, and the purchaser didn't take it, he might accept the penalties in-

stead of taking the loan, and there is [63] no obligation in this contract that says he has to take the loan.

Q In your opinion, you could file suit for specific performance?

A Precisely

Q I think Mr. Price mentioned that commissions were earned at the time the agreement to sell and to buy was signed or you mentioned that?

A No, sir. I mentioned that commissions are earned depending upon the wording of the contract, and all those contracts are different.

Q What about this contract? At what time is the commission earned?

A I will read you, "The commission is earned by agent when this agreement is signed by both parties and when the mortgage loan, if any, has been secured."

Q As a matter of fact, under this particular document, the commission is not earned until the mortgage loan is secured, isn't that right?

A If you have a fast transaction and no conditional loan, if your conditions are [64] met at the time of signing.

Q What actually does that loan get that you just read in here?

A If you have a cash transaction and both parties sign the agreement, if you have a mortgage loan transaction, when the mortgage loan is obtained, after the agreement is signed, you earn the commission, not at the act of sale, and that is when the wording says, and I assume that is the way it is, and, so, there is a lot of custom agreements other than that used by realtors. It varies in case to case. I have seen many agreements, and

some of them with all this struck out (indicating), and it says earned at the act of sale and doesn't say anything else.

Q It is your testimony that in this area, the mortgage loan is as a normal course, the mortgage loan is made at the time different than the act of sale?

A No, the mortgage loan is usually made right at the same time as the act of sale. Some of them are made after, however.

[65] Q Mr. Derbes, how many lending institutions are members of the New Orleans Board of Realtors?

A I don't know the answer to that. There are many associate members which are people that just pay dues, maybe one or two.

Q I would like to get a list of all of the lending institutions that are members of the New Orleans Board of Realtors.

MR. BALLIN:

On subpoena.

MR. NELSON:

I have to subpoena it?

MR. BALLIN:

Yes.

MR. NELSON:

All right.

EXAMINATION BY MR. NELSON:

Q The question is, are there any homesteads or

other companies that have membership in the Board? Now, that is my question.

MR. BALLIN:

What is your answer — you don't know?

[66] THE WITNESS:

I don't know.

EXAMINATION BY MR. NELSON:

Q Is it your answer that you do not know whether there are any homesteads or mortgage companies that are members in the Board?

A I do not know that. I honestly do not know that. I told you earlier that the only affiliate member I know about is New Orleans East, and there are about four or five of them. This is a new type of membership classification that came along in the last six months.

Q You suggested homesteads that you knew.

A There may be.

Q Well, if the President doesn't know —

MR. NELSON:

Those are all the questions I have.

* * * *

EXAMINATION BY MR. NELSON:

Q [69] Mr. Derbes, how difficult would it be for you to collect publications of the Board, say over the last twenty-four months, how difficult would that be to collect that?

MR. PRICE:

Which Board?

MR. NELSON:

The Board we have been talking about. He has been using the word Board synonymously.

The question is, how difficult would it be, would it take you a week, two weeks, or what?

THE WITNESS:

I assume two or three days.

MR. NELSON:

How many people would it take?

THE WITNESS:

I assume it would take two people.

MR. NELSON:

I have no further questions for you, Mr. Derbes.

(Witness Certificate Omitted)

[462] UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: Mar. 29, 1977

Deposition of STAN WEBER, taken in the office of Messrs. Nelson, Nelson & Lombard, Suite 1100, 344 Camp Street, New Orleans, Louisiana, on Tuesday, January 11, 1977.

APPEARANCES: (Omitted)

* * * *

[14] EXAMINATION BY MR. NELSON:

Q Mr. Weber, is it your testimony that the agent does not have any responsibility at all in connection with collecting the commission?

A I have to go on the same answer that Mr. Price just gave. The agent can be a carrier of the commission back to the office, but as far as collecting, he or she —

Q I am talking about the closing.

A The attorney disburses the funds and gives the check, if indeed there is a check. In a lot of cases there is not at the Act of Sale. The agent will then, indeed, bring back the check to the office.

* * * *

EXAMINATION BY MR. NELSON:

[19] Q Who is, is any one person?

A Each branch manager, in each office.

Q Now, the seminars we are talking about, are these limited to agents within a particular office?

A No, sir, they are put out on a regular basis, stating this man from whatever company, will be there.

Q You have six hundred agents, and are they all notified at a particular time and place?

A They are all notified by a weekly bulletin that I put out about whatever is going to transpire.

Q The weekly bulletin is put out by you?

A Correct, the administrative office.

Q Where is the administrative office located?

A 3841 Veterans.

Q Whose responsibility is it to print the weekly bulletin?

A The administrative office.

* * * *

EXAMINATION BY MR. NELSON:

[25] Q Mr. Weber, at any of these company wide meetings and seminars, are there topics dealing with federal statutes such as the availability of FHA/VA money discussed?

A I am sure that is what the mortgage companies are coming up to talk about.

Q To your knowledge, have you ever had somebody representing any government agencies address your company?

A Government agencies?

Q I am not talking about Fair Housing Act.

[26] A I can't come up with any government agencies that have been to our offices.

Q Do you keep a list of the number of agents that attend these company wide gatherings?

A Not that I know of.

Q As far as you are concerned, it has never been your company policy to keep a list?

A No, I don't want to.

Q How long have you been president?

A Ten and a half years. Since we opened.

Q Now, how do your agents go about generally securing listing agreements?

A I am not out there with them. I don't know how to answer your question.

Q You have no idea, is that your answer, you have no idea how they do this?

A I have no idea how they do secure a listing agreement.

Q How would you secure a listing agreement?

A When I was an agent?

Q Yes, sir.

A I secured them by referral basis.

Q Referrals from whom?

A People that knew someone that wanted to sell.

[27] Q At any of these office meetings, sales meetings, did any discussion ever address themselves to how do you secure listing agreements?

A Oh, I am sure there is, yes.

Q And could you give us a summary of the contents or general, just in general, the way about, what Stan Weber's policy is in this regard?

A I don't have a policy. No. All I can do is expose them to ways to get listings.

Q How does Stan Weber expose agents in ways to get listings?

A As I said before, my managers do this, and I don't do this. I have no idea of all the complexities that they get into.

Q You have no idea?

A Of the complexities that they get into, what they present to the agents on how to get listings was my answer to the question.

Q How would you define complexities for the record?

A Explanations, all the ramifications of the ways to secure listings, to use another [28] word, any ways that are obvious.

Q For the record, tell me the obvious ways.

A We listed the most obvious, references — for sale by owner is an obvious way to secure a listing.

Q Any others?

A The joining of certain organizations that would expose an agent to people. That would be a mobile association.

Q Any others?

A That would be the three most obvious.

Q Well, while we are on this subject, the joining of organizations, what organizations do you have reference to?

A I am talking about an agent belonging to a church or civic organization or things of that nature.

Q Now, my questions I am going to ask you are go-

ing to be limited to residential housing, one, two, three, four occupancy family homes.

A Okay.

Q Have you ever in your experience in the real estate business ever secured a listing on behalf of a person living outside of [29] the state of Louisiana to sell property within the state of Louisiana?

A Repeat that again?

Q Have you ever obtained a listing agreement from someone who lives outside of the state of Louisiana to sell his property or her property that is located inside the state of Louisiana?

A I am sure we have. I can't recall a name or any particular instance. I am sure in the past that has transpired.

Q Do you keep a list of listing agreements for people that own property in Louisiana, but those people live outside of the state?

A Would I keep a list, a separate list?

Q Any kind of a list.

A Are you talking about as a separate entity from anything else?

Q If I wanted to know how many of these?

A No.

Q What about a list of people, could you secure a listing agreement from someone who has a residence in the state of Louisiana but wanted to sell a piece of [30] property outside of the state?

A I am not licensed outside of Louisiana.

Q You can only sell within the state of Louisiana?

A Yes.

Q If a person wanted to sell property outside of the state and comes to you, would you refer them to an out of state agency, or would you handle the matter and contact an out of state agency?

A If I knew someone that was a friend of mine, where they were going, I would indeed give them a buzz and send them.

Q Would you be entitled to some kind of commission?

A It depends on who I am talking about. In some instances, yes, and in some no, it would just be a buddy transaction.

Q What would be the deciding transaction of whether you get a part of the commission?

A If it was a buddy of mine, and he would reciprocate with me, then, I wouldn't take a commission. If I didn't know the man at all, it is possible it would be a referral commission.

[31] Q There is no statute or regulation or rule to prohibit you from sharing in the sale of those commissions from out of state sale of property?

MR. MC CALL:

The witness cited a referral commission. You are now talking about a commission for the sale of property. I think the witness should understand the question, and I submit the question in its existing form is unclear.

MR. NELSON:

Do you think it is unclear?

THE WITNESS:

Well, it carried on so far, I would go along with this gentleman. I didn't catch fully the whole thing. I was going to ask you to repeat that one, because it went on in such a length.

EXAMINATION BY MR. NELSON:

Q The hypothetical situation is a resident in the state of Louisiana who comes to you, to Stan Weber, to sell a piece of property outside the state, let's say [32] in Mississippi. Now, would you, as a matter of policy, would you refer this person to an agent in Mississippi, or would you contact an agent in Mississippi?

A No, we would contact an agent in another state.

Q Would there be, to your knowledge, any law or rule or regulation that would prohibit you from sharing in a commission that is earned on the sale of that particular piece of property?

A On a commission earned on this sale, there would be a problem, but in regards to the referral commission, no.

Q What is the usual referral commission on a piece of residential property, do you know?

A Let's see — it is going to be ten per cent in the organization that I belong to.

Q What organization is that?

A Homes for Living.

Q Ten per cent of what?

A Of the commission that the other broker collects.

[33] Q So, if the other broker collects six per cent, you would get ten per cent of six per cent, is that correct?

A Uh-huh. (Affirmative response.)

Q Now, Mr. Weber, one of your agents secures a listing agreement to sell residential property, and the next, would you say the next problem they have is to sell that piece of property?

A Yes, sir.

Q Now, what do you, does Stan Weber Company and Associates Incorporated, do they do anything as a company in order to assist various agents to sell or to secure purchases?

A I would have to say, yes.

Q What is this?

A Advertisements that you have in the newspapers.

Q Who decides in your company what particular piece of property would be advertised in the newspapers?

A Our branch managers.

Q So, you have fifteen people deciding what pieces of property go in, is that correct?

A Yes.

[34] Q There is no one person in Stan Weber that has the ultimate responsibility?

A That is right.

Q Does Stan Weber pay for the advertising?

A Yes.

Q Are payments for advertisements, do they come out of the main office?

A Correct.

Q How does the main office know what listings

were advertised in the paper by the various branch offices?

A They call in to the ad department.

Q Who is in charge of your ad department?

A Theresa somebody. I don't know her last name either.

Q We want that last name.

A Brushyer. (Spelled phonetically)

Q She works in your main office?

A Yes, sir.

Q Actually what are her responsibilities?

A To write ads.

Q For the newspapers?

A Yes.

Q Does she have the responsibility to prepare or secure any advertising other than the [35] newspapers?

A No, that is the only thing she does.

Q How many newspapers, number wise, in this state, would you advertise your property in?

A Well, probably three.

Q Times Picayune would be one, of course?

A I put that together with the States Item and in the Guide Newspapers.

Q Do you ever have to do any advertising on radio?

A No, sir. Wait a minute — I did one in that twenty-four month period, but it was commercials.

Q Television?

A No, sir.

Q Would you think it important for these agents to keep up to date with the interest rates and the money market?

A Would it be to their benefit? Certainly.

Q Does Stan Weber Company, when I speak of Stan Weber, I am speaking about the company, does it do anything, furnish any information to its agents in connection with keeping them up to date [36] on the availability of money?

A The agent basically are the ones that secure the majority of the financing information. However, it is then given to the branch managers. The branch managers then will have the knowledge of the new money markets or something of this nature.

Q So, your company does not —

A It might be some of my branch managers that might take and initiate activities themselves, or if a mortgage company calls them directly to get the information out quicker.

Q Why would it be important to your agent to be up to date about the availability of money from various mortgage companies, banks, et cetera?

A I think that is an obvious answer. They naturally know the best money market, and they can do the best selling job, to be able to get the best monthly payments to the purchaser.

Q So, when you say purchaser, we are talking about the home buyers, is that correct?

A Correct.

[37] Q Now, is it not a fact that no money is earned by Stan Weber or the agent until the act of sale is passed?

A That is correct.

Q Now, in connection with your sales meetings, to

your knowledge, have you ever included any information as to actually what goes on in an act of sale?

A I am sure that is transpired, to take them out of the fear of all you lawyers.

Q Would you say it is important for an agent to learn about mortgage and conveyance certificates, what they represent?

A Just for the factual information, to explain to them to their clients, when they are apprehensive in an act of sale.

Q Is it not a fact that agents generally cooperate with the lending institutions in securing copies of act of sales, surveys or any documents that may be needed in connection with determining whether or not a title is valid?

A Usually an attorney will request an act to secure those documents for them, unless it happens to be an assumption sale.

[38] Q You are talking about the attorney for the lending institution?

A Correct.

Q So, that would be the usual procedure, wouldn't it?

A That an attorney will request from an agent certain things? Yes.

Q It is the agent's responsibility would be to contact the prospective purchaser to get that information?

A No, it would be from the seller.

MR. PRICE:

I think you have gotten off on a very generalization here, which is completely unfair, and I am going to

interpose an objection to this line of questioning. Mr. Weber mentioned something about mortgage and conveyance certificates, and your line of questioning seems to indicate that Mr. Weber's response to that is it is the usual procedure that attorneys go out and get an agent to run get the mortgage conveyance certificate.

* * * *

[46] Q Does Stan Weber pay dues?

A I pay yearly dues, yes, sir.

Q Do you have any other financial requirements to the organization?

A Other than the dues, no, sir.

Q Now, the Homes for Living Network, is there a main office?

A Yes, St. Louis, Missouri.

Q Do you have executive officers there full time?

A I'm sure they do.

Q Do you have a copy of the constitution and bylaws for this group?

A No, I wouldn't have any constitution or bylaws that is required for me to be a member. There might have some for their own corporation.

Q Do you have in your possession any rules or regulations promulgated by the Homes for Living Network?

A I am sure I have a contract.

Q I would like to get a copy of the contract and attach it to this deposition.

* * * *

[56] Q Mr. Weber, Home Equity and Home America, in connection with them, what are the referral fees?

A I would have to get all of the breakdowns, because there is a number of breakdowns.

Q I am talking about residential homes.

A I follow you. It is some different breakdowns, depending on the guy that starts. There are all different deals. You would have to consider all of those.

Q Other than the Homes for Living Network and Home Equity of Home America, are there any other national organizations that Stan Weber is a member of?

A The Home Builders Association. One of my men wanted to get into that to get referrals. I didn't think of that one.

Q Where are they located, do you know?

A No, just a local deal here.

Q How would that assist in getting referrals from out of the state?

A That wouldn't. That is what we alluded to back earlier, that an agent or an agent belonging to an organization would get referrals on the basis of [57] knowing people in organizations.

Q Are you a member of the Chamber of Commerce?

A Oh, yes. I didn't consider that national. I consider that local.

Q What efforts, if any, do you make in connection with determining what businesses are going to be located, what new industry is going to be located in this

area, how many people are going to be coming down here?

A We don't do anything at all.

Q You don't make inquiries?

A No, by the time you get those, they are dead.

Q Other than the listing of your name with these national organizations that refer, what you call, clients, would you call it?

A Yes.

Q Clients — do you list with them any other information such as homes that are available, the general market in this area or any other information that is relevant to one who wants to make a decision to buy a home?

[58] A Yes, then, what we have for sale.

Q How would they know that?

A By supplying information to them.

Q Do they supply information on a regular schedule?

A Once a month.

Q Do you keep copies of that information that you refer to them?

A Yes.

Q I would like to get copies of whatever information is referred to these national organizations in connection with availability of residences in this area for the period of January '71 to 1975.

A I don't have records that far back.

Q I understand, just tell me that is all you have, and I will go with that.

Are your agents ever given any instructions at the sales meetings as to FHA/VA procedures or procedures required by FHA or VA for lending purposes?

A Oh, I am sure they are, yes.

Q Would you say it would be important for an agent to know this?

[59] A Well, of course, we are getting into a whole wide spectrum here. Are we talking about qualifications, what does a person have to do, if they are making money, are you referring to that or something else?

Q My question was, to your knowledge, at any of the sales meetings are your agents instructed as to the procedures required to secure an FHA and VA loans?

A Procedures is a strange word there to me. That is why I keep questioning you on it. If they are indeed given information, what is the requirement to buy an FHA, VA house? Yes, but the procedures are something else.

Q What are the various commitments that the Federal Housing Administration issues, the terminology of them?

A They get into so many things every week, and every week they change. We will supply them, and by the different mortgage companies that come to the people and tell them what it takes to buy an FHA/VA house, as far as financing, [60] and in terms of their salary.

Q You are concerned that your agents know enough about that to talk intelligently with the prospective buyer?

A That is all he wants to know, what it takes to qualify for FHA/VA loan.

Q You would expect your agent to know that?

A Yes, because if they didn't know, they would be hurting their own business. I would expect them to know. Whether they do or not, I don't know.

Q Mr. Weber, on page 735 of the yellow pages of the phone book for the city of New Orleans, there is a little advertisement, a piece of advertisement entitled, "Homes for Living Network," and has a little diagram of the continental United States. Was this particular diagram in which the United States was outlined, was that prepared by you or furnished to you for inclusion in this phone book for your national office?

A Actually the drawing was supplied, but not mandatory to use.

[61] Q If you wanted to use it, you used it, is that the way the national office referred it to you?

A It is my discretion to use it in that manner or another manner, and there are indeed other designs. It is not mandatory.

Q "We can help you buy, sell or trade a home anywhere in the nation," was that referred to you by the national?

A That is the wording they used on their advertising.

Q You are talking about Homes for Living Network?

A Yes.

Q Mr. Weber, other than this particular listing in the phone book on page 735 of the yellow pages, is Stan Weber listed anywhere else, to your knowledge?

A In the yellow pages, there is a block ad.

Q On page 732, you are talking about?

A Yes. To my knowledge, there isn't any other in the yellow pages under another category. However, I do not schedule the yellow pages advertising, and there could be another insert, but I can't [62] anticipate any other insert, to my knowledge, that there could be.

Q But, that is in the yellow pages and is there within your full knowledge?

A Oh, yes, but I can't conceive of any other listing under any other category — there is one other that just hit me, but still under real estate — right here (indicating) — I think it is there, yes, there it is. (Indicating) There are three places.

Q There is a listing on page 736 under the Jefferson Board of Realtors, Inc., is that right?

A Yes, it just hit me that was in there.

Q What local organizations are you a member of?

A Jefferson, Orleans and St. Tammany Boards of Realtors. You are talking about in regards to real estate?

A Yes, sir.

A Three organizations.

Q Are there any other organizations that Stan Weber is a member of other than those three dealing with anything else?

A The Jaycees, Better Business Bureau, Chamber [63] of Commerce, normal type things.

Q Mr. Weber, other than the organizations referred to, Stan Weber does not belong to any other organizations that offer referral services, sales of residences outside the state of Louisiana, is that correct?

A In residential?

Q Yes, sir, residential sales.

A There is one other organization, but I determined it to be basically commercial.

Q What is the organization?

A E-R-R-A-C, Errac — Employers Relocation — I don't know, but it is Errac. I just can't come up with those initials, what they stand for. It is not a referral organization. It is only an organization that is a roster of brokers in particular cities.

Q Do you pay regular yearly dues?

A No dues, just a roster — wait a minute — there might be dues for the booklet. I would hesitate to answer either way. I have to correct myself, but it is my understanding I don't have yearly dues [64] in regard to, as you referred to for the referral organizations. This is just people that are in what service that they do have, and it is more hooked up to appraising than it is to the sale of real estate, in my understanding.

Q Do you have any documents at your office indicating the nature of the organization?

A Oh, I'm sure there are some.

Q Could we get a copy of whatever documents indicate your membership in Errac, together with the purposes of Errac?

A Yes.

Q How many years has Stan Weber been a member?

A As well as my memory serves, we have been in the roster three or four years.

MR. MC CALL:

I thought the witness said that it is commercial, not residential.

THE WITNESS:

That was my interpretation, it was of commercial and appraising, and when they needed an appraisal and something in commercial. It is not an organization that I am involved in such as [65] Homes for Living and I know actually the scope of their business. I don't know what Errac. Someone asked me to get into it, because when they came to me, they knew the organization, and it was as simple as that.

MR. MC CALL:

That line of questioning is objectionable, and it goes beyond the line.

MR. NELSON:

I would like information, reserving whatever anybody else's objections would be, waiving relevancy or whatever.

THE WITNESS:

It is not a referral situation, whether one broker calls another broker or not. It is a situation where it is only a roster situation, to my understanding.

EXAMINATION BY MR. NELSON:

Q Could it be used for residential homes?

A I am sure it could be.

Q Mr. Weber, what percentage of your yearly business relates to the sale of residential [66] homes as compared to your sale of all property?

A I would say eighty-five to ninety per cent.

Q About eighty-five or ninety per cent of your work, the activity of Stan Weber, concerns itself with the sale of residential homes, is that correct?

A That is correct.

MR. NELSON:

I don't have any further questions, Mr. Weber. Thank you very much. Maybe one of these gentlemen might have some questions.

EXAMINATION BY MR. MC CALL:

Q Mr. Weber, I am Harry McCall, Jr., and I, along with Mr. Ballin, represent the Real Estate Board of New Orleans, and I just have a couple of questions with respect to your testimony.

First, with respect to your testimony about this referral service, is the referral commissions, I believe that is the term you used, which you receive, payable for any services rendered in the sale of the property itself?

[67] A We don't get involved at all in working with the property. It is only if indeed it is sold. It is not an involvement as a normal real estate agent, in trying to sell the house.

Q That payment is simply for putting the agent at the new location in touch with the purchaser, is that right?

A That is all it is to it.

Q With reference to your testimony that you gave regarding information agents be acquainted and provided with concerning money and interest rates and so forth. Is any of that information available only to real estate agents?

A It is available to anyone.

Q Is the agent furnished this information simply as an accommodation to the purchaser?

A That is what it amounts to.

Q Is there any compensation for furnishing this information?

A No, sir, there sure isn't.

Q Is an agent, is there any part that the agent plays in the completion of the real [68] estate sale?

A Our terminology might be different. I want to know what you mean by closing.

Q That is the act before the notary public.

A They had nothing to do with that.

MR. MC CALL:

Thank you. I believe those are my questions.

EXAMINATION BY MR. NELSON:

Q Mr. Weber, the escrow funds that are collected by your agents when the agreement to purchase is signed, that is kept by you initially, is that correct?

A Uh-huh. (Affirmative response.)

Q Now, that money represents part of the purchase price, is that correct?

A Right.

Q That does not represent the commission?

A No.

* * * *

[482] UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Number and Title Omitted)

Filed: May 31, 1977

JUDGMENT

For the written reasons on file herein,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Real Estate Board of New Orleans, Inc., Jefferson Board of Realtors, Inc., Gertrude Gardner, Inc., Latter and Blum, Inc., Waguespack and Pratt, Inc., Stan Weber and Associates, Inc., Sandra, Inc., Isabelle McLeod, d/b/a Isabelle C. McLeod, Realtors, and all other parties similarly situated, and against plaintiffs, James Jefferson McLain, Douglas Arthur Nettleton, Jr., Raymond Joseph Munna, Irving Hursch Koch, and all other parties similarly situated, dismissing plaintiffs' suit with costs.

New Orleans, Louisiana, this 31st day of May, 1977.

/s/ NELSON B. JONES
NELSON B. JONES, CLERK

Approved as to form:

/s/ EDWARD J. BOYLE, SR.
UNITED STATES DISTRICT JUDGE

Date of Entry: 6/1/77.